

CHAPTER 791. DEPARTMENT OF CORRECTIONS

DEPARTMENT OF CORRECTIONS

Act 4 of 1947 (2nd Ex. Sess.)

791.1-791.123 Repealed. 1953, Act 232, Eff. Oct. 2, 1953.

CORRECTIONS CODE OF 1953
Act 232 of 1953

AN ACT to revise, consolidate, and codify the laws relating to probationers and probation officers, to pardons, reprieves, commutations, and paroles, to the administration of correctional institutions, correctional farms, and probation recovery camps, to prisoner labor and correctional industries, and to the supervision and inspection of local jails and houses of correction; to provide for the siting of correctional facilities; to create a state department of corrections, and to prescribe its powers and duties; to provide for the transfer to and vesting in said department of powers and duties vested by law in certain other state boards, commissions, and officers, and to abolish certain boards, commissions, and offices the powers and duties of which are transferred by this act; to allow for the operation of certain facilities by private entities; to prescribe the powers and duties of certain other state departments and agencies; to provide for the creation of a local lockup advisory board; to provide for a lifetime electronic monitoring program; to prescribe penalties for the violation of the provisions of this act; to make certain appropriations; to repeal certain parts of this act on specific dates; and to repeal all acts and parts of acts inconsistent with the provisions of this act.

History: 1953, Act 232, Eff. Oct. 2, 1953;—Am. 1980, Act 303, Imd. Eff. Nov. 26, 1980;—Am. 1984, Act 102, Imd. Eff. May 8, 1984;—Am. 1988, Act 510, Eff. Mar. 30, 1989;—Am. 1992, Act 22, Imd. Eff. Mar. 19, 1992;—Am. 1993, Act 184, Imd. Eff. Sept. 30, 1993;—Am. 1996, Act 164, Eff. Mar. 31, 1997;—Am. 2006, Act 172, Eff. Aug. 28, 2006.

Compiler's note: For transfer of the Department of Corrections to a new Department of Corrections, see E.R.O. No. 1991-12, compiled at MCL 791.302 of the Michigan Compiled Laws.

For abolition of the Michigan Corrections Commission and transferring its powers, duties, and functions to the Director of the new Department of Corrections with the exception that the power to appoint the Director shall be vested with the Governor, see E.R.O. No. 1991-12, compiled at MCL 791.302 of the Michigan Compiled Laws.

Popular name: Department of Corrections Act

The People of the State of Michigan enact:

CHAPTER I
DEPARTMENT OF CORRECTIONS.

791.201 State department of corrections; creation; powers and duties; administration; Michigan corrections commission; appointment, qualifications, and terms of members; officers and assistants; director as executive head; vacancy; compensation and expenses; executive office; office accommodations; meetings.

Sec. 1. There is hereby created a state department of corrections, hereinafter called the department, which shall possess the powers and perform the duties granted and conferred. The department shall consist of and be administered by a commission of 6 members appointed by the governor, by and with the advice and consent of the senate, to be known as the Michigan corrections commission, hereinafter called the commission, not more than 3 of whom shall be members of the same political party, each of whom shall qualify by taking the constitutional oath of office, and filing the same in the office of the secretary of state, and of such other officers and assistants as may be appointed or employed in the department, including a director as its executive head. A person holding a position either state or federal, or a person drawing a salary from a municipal unit of the state, shall not be eligible for appointment to the commission, without having first resigned from that position. The term of office of each member of the commission shall be 6 years. The governor shall fill a vacancy occurring in the membership of the commission for the unexpired term only, and for cause established on hearing may remove a member. Each member of the commission shall hold office until his successor shall be appointed and shall qualify. The per diem compensation of the commission and the schedule for reimbursement of expenses shall be established annually by the legislature. The department and commission shall have its executive office at Lansing. The department of management and budget shall provide suitable office accommodations. Meetings of the commission may be held at other suitable places as the commission may designate.

History: 1953, Act 232, Eff. Oct. 2, 1953;—Am. 1975, Act 59, Imd. Eff. May 20, 1975.

Compiler's note: For transfer of the Department of Corrections to a new Department of Corrections, see E.R.O. No. 1991-12, compiled at MCL 791.302 of the Michigan Compiled Laws.

For abolition of the Michigan Corrections Commission and transferring its powers, duties, and functions to the Director of the new Department of Corrections with the exception that the power to appoint the Director shall be vested with the Governor, see E.R.O. No. 1991-12, compiled at MCL 791.302 of the Michigan Compiled Laws.

Transfer of powers: See MCL 791.301.

Popular name: Department of Corrections Act

791.201a Short title.

Sec. 1a. This act shall be known and may be cited as the “corrections code of 1953”.

History: Add. 2002, Act 212, Imd. Eff. Apr. 29, 2002.

Popular name: Department of Corrections Act

791.202 Michigan corrections commission; election of chairperson and other officers; meetings; quorum; powers and duties; conducting business at public meeting; notice.

Sec. 2. (1) The commission shall elect annually a chairperson and other officers as it considers expedient. A meeting shall be held not less than once each month or at other times as considered necessary. A majority of the total membership of the commission shall constitute a quorum for the transaction of business. The commission shall constitute the responsible authority for the administration of the correctional facilities, correctional industries, parole, and probation of the state, subject to the limitations set forth in this act. The commission shall determine all matters relating to the unified development of the correctional facilities, correctional industries, parole, and probation of the state and shall coordinate and adjust the agencies and correctional facilities within its jurisdiction so that each shall form an integral part of a general system.

(2) The business which the commission may perform shall be conducted at a public meeting held in compliance with Act No. 267 of the Public Acts of 1976, being sections 15.261 to 15.275 of the Michigan Compiled Laws. Public notice of the time, date, and place of the meeting shall be given in the manner required by Act No. 267 of the Public Acts of 1976.

History: 1953, Act 232, Eff. Oct. 2, 1953;—Am. 1978, Act 413, Imd. Eff. Sept. 28, 1978;—Am. 1987, Act 79, Imd. Eff. June 29, 1987.

Popular name: Department of Corrections Act

791.203 Corrections commission; director of corrections, appointment, qualifications, salary, powers and duties.

Sec. 3. The commission shall appoint a director of corrections who shall be qualified by training and experience in penology. He shall hold office at the pleasure of the commission except that he may be removed for cause and only after a public hearing before the commission. He shall receive such salary as shall be appropriated by the legislature, together with actual and necessary traveling and other expenses. The director shall be the chief administrative officer of the commission and shall be responsible to the commission for the exercise of the powers and duties prescribed and conferred by this act, and for such other powers and duties as may be assigned by the commission, subject at all times to its control. Subject to the provisions of this act, and to the rules and regulations adopted by the commission, the director shall have full power and authority to supervise and control the affairs of the department, and the several bureaus thereof, and he shall carry out the orders of the commission.

History: 1953, Act 232, Eff. Oct. 2, 1953.

Popular name: Department of Corrections Act

791.204 State department of corrections; jurisdiction.

Sec. 4. Subject to constitutional powers vested in the executive and judicial departments of the state, the department shall have exclusive jurisdiction over all of the following:

- (a) Probation officers of this state, and the administration of all orders of probation.
- (b) Pardons, reprieves, commutations, and paroles.
- (c) Penal institutions, correctional farms, probation recovery camps, prison labor and industry, wayward minor programs, and youthful trainee institutions and programs for the care and supervision of youthful trainees.
- (d) The lifetime electronic monitoring program established under section 85.

History: 1953, Act 232, Eff. Oct. 2, 1953;—Am. 1966, Act 210, Imd. Eff. July 11, 1966;—Am. 2006, Act 172, Eff. Aug. 28, 2006.

Popular name: Department of Corrections Act

791.205 Corrections commission; assistant directors, powers and duties.

Sec. 5. The director, subject to the approval of the commission, shall appoint an assistant director in charge of probation, an assistant director in charge of pardons and paroles, an assistant director in charge of penal institutions, an assistant director in charge of prison industries, and an assistant director in charge of a youth division. The assistant directors shall exercise and perform the respective powers and duties prescribed and conferred by this act, and such other powers and duties as may be assigned by the director, subject at all times to his control.

History: 1953, Act 232, Eff. Oct. 2, 1953.

Popular name: Department of Corrections Act

791.205a Employment or appointment by department of person convicted or charged with felony.

Sec. 5a. (1) Beginning on the effective date of this section, an individual who has been convicted of a felony, or who is subject to any pending felony charges, shall not be employed by or appointed to a position in the department.

(2) If records available to the department show that an applicant for employment or appointment has been convicted of a felony or is subject to pending felony charges, the department shall inform the applicant of that fact and of his or her resulting ineligibility for employment or appointment. At the request of the applicant, the department shall permit the applicant to review the relevant portion of the records. If the applicant disputes the accuracy of the records, the department shall allow the applicant a reasonable period of time to contact the responsible agency or agencies in order to correct the alleged inaccuracies, and shall allow the applicant to reapply for employment or appointment if the records, as corrected, would remove the ineligibility imposed by this section.

(3) This section does not apply to a person employed by or appointed to a position in the department before the effective date of this section.

History: Add. 1996, Act 140, Imd. Eff. Mar. 25, 1996.

Popular name: Department of Corrections Act

791.206 Rules.

Sec. 6. (1) The director may promulgate rules pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, to provide for all of the following:

(a) The control, management, and operation of the general affairs of the department.

(b) Supervision and control of probationers and probation officers throughout this state.

(c) The manner in which applications for pardon, reprieve, medical commutation, or commutation shall be made to the governor; the procedures for handling applications and recommendations by the parole board; the manner in which paroles shall be considered, the criteria to be used to reach release decisions, the procedures for medical and special paroles, and the duties of the parole board in those matters; interviews on paroles and for the notice of intent to conduct an interview; the entering of appropriate orders granting or denying paroles; the supervision and control of paroled prisoners; and the revocation of parole.

(d) The management and control of state penal institutions, correctional farms, probation recovery camps, and programs for the care and supervision of youthful trainees separate and apart from persons convicted of crimes within the jurisdiction of the department. Except as provided for in section 62(3), this subdivision does not apply to detention facilities operated by local units of government used to detain persons less than 72 hours. The rules may permit the use of portions of penal institutions in which persons convicted of crimes are detained. The rules shall provide that decisions as to the removal of a youth from the youthful trainee facility or the release of a youth from the supervision of the department shall be made by the department and shall assign responsibility for those decisions to a committee.

(e) The management and control of prison labor and industry.

(f) The director may promulgate rules providing for the creation and operation of a lifetime electronic monitoring program to conduct electronic monitoring of individuals, who have served sentences imposed for certain crimes, following their release from parole, prison, or both parole and prison.

(2) The director may promulgate rules providing for a parole board structure consisting of 3-member panels.

(3) The director may promulgate further rules with respect to the affairs of the department as the director considers necessary or expedient for the proper administration of this act. The director may modify, amend, supplement, or rescind a rule.

(4) The director and the corrections commission shall not promulgate a rule or adopt a guideline that does either of the following:

(a) Prohibits a probation officer or parole officer from carrying a firearm while on duty.

(b) Allows a prisoner to have his or her name changed. If the Michigan supreme court rules that this subdivision is violative of constitutional provisions under the first and fourteenth amendments to the United States constitution and article I, sections 2 and 4 of the state constitution of 1963, the remaining provisions of the code shall remain in effect.

History: 1953, Act 232, Eff. Oct. 2, 1953;—Am. 1966, Act 210, Imd. Eff. July 11, 1966;—Am. 1982, Act 314, Imd. Eff. Oct. 15, 1982;—Am. 1984, Act 102, Imd. Eff. May 8, 1984;—Am. 1986, Act 271, Imd. Eff. Dec. 19, 1986;—Am. 1996, Act 104, Eff. Apr. 1,

1996;—Am. 2006, Act 172, Eff. Aug. 28, 2006.

Compiler's note: In separate opinions, the Michigan Supreme Court held that Section 45(8), (9), (10), and (12) and the second sentence of Section 46(1) ("An agency shall not file a rule ... until at least 10 days after the date of the certificate of approval by the committee or after the legislature adopts a concurrent resolution approving the rule.") of the Administrative Procedures Act of 1969, in providing for the Legislature's reservation of authority to approve or disapprove rules proposed by executive branch agencies, did not comply with the enactment and presentment requirements of Const 1963, Art 4, and violated the separation of powers provision of Const 1963, Art 3, and, therefore, were unconstitutional. These specified portions were declared to be severable with the remaining portions remaining effective. Blank v Department of Corrections, 462 Mich 103 (2000).

Popular name: Department of Corrections Act

Administrative rules: R 791.1101 et seq. of the Michigan Administrative Code.

791.207 Report to governor and legislature; time; order by board of auditors; printing and distribution.

Sec. 7. On or before the 15th day of January of each year, the commission shall make to the governor and legislature a report of the department for the preceding fiscal year. Such report, if so ordered by the board of state auditors, shall be printed and distributed in such manner and to such persons, organizations, institutions and officials as said board may direct.

History: 1953, Act 232, Eff. Oct. 2, 1953.

Popular name: Department of Corrections Act

791.207a Records of department; accessibility by governing bodies of senate and house fiscal agency.

Sec. 7a. (1) Except as provided in subsection (2), the governing bodies of the senate and house fiscal agencies shall have access to all records of the department of corrections relating to individuals under the supervision of the department of corrections including, but not limited to, records contained in basic information reports and in the corrections management information system, the parole board information system, and any successor databases.

(2) Records shall not be accessible under subsection (1) if the department of corrections determines that any of the following applies:

- (a) Access is restricted or prohibited by law.
- (b) Access could jeopardize an ongoing investigation.
- (c) Access could jeopardize the safety of a prisoner, employee, or other person.
- (d) Access could jeopardize the safety, custody, or security of an institution or other facility.

(3) The records that are to be accessed, and the manner of access to those records, shall be determined under a written agreement entered into jointly between the governing board of the senate fiscal agency, the governing committee of the house fiscal agency, and the department of corrections. The agreement shall ensure the confidentiality of accessed records.

History: Add. 1998, Act 315, Eff. Dec. 15, 1998.

Popular name: Department of Corrections Act

791.208 Division of criminal statistics; powers and duties of director.

Sec. 8. Within the department there shall be established a general division of criminal statistics under the supervision and control of the director. He shall have the power and it shall be his duty to obtain from all chiefs of police, sheriffs, state police, prosecuting attorneys, courts, judges, parole and probation officers and all others concerned in the control, apprehension, trial, probation, parole and commitments of adult criminals and delinquents in this state, periodical reports as to the number and kinds of offenses known to law enforcement officers; the numbers, age, sex, race, nativity and offenses of criminals and delinquents arrested, tried and otherwise disposed of; the sentences imposed and whether executed or suspended; the numbers placed on parole and probation and the reasons therefor and such other information as he may deem necessary. It shall be the duty of all such chiefs of police, sheriffs, state police, prosecuting attorneys, courts, judges, parole and probation officers and others concerned to make such reports at such times and in such manner, and to furnish such facilities for investigation as the director may reasonably require.

History: 1953, Act 232, Eff. Oct. 2, 1953.

Popular name: Department of Corrections Act

791.209 Corrections commission; crime prevention and criminology research.

Sec. 9. The commission shall study the problem of crime prevention and foster research in criminology. It shall lend its aid in local crime prevention activities.

History: 1953, Act 232, Eff. Oct. 2, 1953.

Popular name: Department of Corrections Act

791.210 Corrections commission; bond of officers and employees, purpose.

Sec. 10. The commission may require a bond from any officer or employee appointed by or subject to the control of the commission, conditioned upon the faithful performance of his duties and the accounting for all money and property within his control.

History: 1953, Act 232, Eff. Oct. 2, 1953.

Popular name: Department of Corrections Act

791.211 Corrections commission; powers and duties.

Sec. 11. The commission shall exercise the powers and duties created by Act No. 89 of the Public Acts of 1935, being sections 798.101 to 798.103, inclusive, of the Compiled Laws of 1948, and by any interstate compact made and entered into pursuant to said act, in regard to the control and supervision of parolees and probationers, and in regard to cooperative effort and mutual assistance in the prevention of crime and in the enforcement of the penal laws and policies of the contracting states, and the commission may promulgate such rules and regulations as may be deemed necessary to more effectively carry out the terms of the aforesaid act and compacts made pursuant thereto.

History: 1953, Act 232, Eff. Oct. 2, 1953.

Popular name: Department of Corrections Act

791.211a Interstate corrections compact; contracts; suitability of institutions for confinement; out-of-state transfer of prisoners; conditions; report.

Sec. 11a. (1) The director of corrections may enter into contracts on behalf of this state as the director considers appropriate to implement the participation of this state in the interstate corrections compact pursuant to article III of the interstate corrections compact. The contracts may authorize confinement of prisoners in, or transfer of prisoners from, correctional facilities under the jurisdiction of the department of corrections. A contract shall not authorize the confinement of a prisoner who is in the custody of the department in an institution of a state other than a state that is a party to the interstate corrections compact. When transferring prisoners to institutions of other states under this section, the director shall endeavor to ensure that the transfers do not disproportionately affect groups of prisoners according to race, religion, color, creed, or national origin.

(2) The director of corrections shall first determine, on the basis of an inspection made by his or her direction, that an institution of another state is a suitable place for confinement of prisoners committed to his or her custody before entering into a contract permitting that confinement, and shall, at least annually, redetermine the suitability of that confinement. In determining the suitability of an institution of another state, the director shall determine that the institution maintains standards of care and discipline not incompatible with those of this state and that all inmates confined in that institution are treated equitably, regardless of race, religion, color, creed, or national origin.

(3) In considering transfers of prisoners out-of-state pursuant to the interstate corrections compact due to bed space needs the department shall do all of the following:

(a) Consider first prisoners who volunteer to transfer as long as they meet the eligibility criteria for such transfer.

(b) Provide law library materials including Michigan Compiled Laws, Michigan state and federal cases, and U.S. sixth circuit court cases.

(c) Not transfer a prisoner who has a significant medical or mental health need.

(d) Use objective criteria in determining which prisoners to transfer.

(4) Unless a prisoner consents in writing, a prisoner transferred under the interstate corrections compact due to bed space needs shall not be confined in another state for more than 1 year.

(5) A prisoner who is transferred to an institution of another state under this section shall receive all of the following while in the receiving state:

(a) Mail services and access to the court.

(b) Visiting and telephone privileges.

(c) Occupational and vocational programs such as GED-ABE and appropriate vocational programs for his or her level of custody.

(d) Programs such as substance abuse programs, sex offender programs, and life skills development.

(e) Routine and emergency health care, dental care, and mental health services.

(6) One year after April 13, 1994 and annually after that date, the department shall report all of the following to the senate and house committees responsible for legislation concerning corrections and to the

appropriations subcommittees on corrections:

(a) The number of prisoners transferred to or from correctional facilities in this state pursuant to the interstate corrections compact.

(b) The cost to the state of the transfers described in subdivision (a).

(c) The reasons for the transfers described in subdivision (a).

History: Add. 1994, Act 93, Imd. Eff. Apr. 13, 1994;—Am. 1998, Act 204, Imd. Eff. June 30, 1998.

Popular name: Department of Corrections Act

791.212 Michigan corrections commission; seal; rules and orders; records and papers as evidence; commission as body corporate; leasing lands and granting easements; availability of certain writings to public.

Sec. 12. (1) The commission shall devise a seal, and the rules of the commission shall be published over the seal of the commission. All orders of the commission shall be issued over the seal of the commission. A copy of the records and papers in the office of the department, certified by an authorized agent of the commission and authenticated by the seal of the commission, shall be evidence in all cases with the same effect as the originals. A description of the seal, with an impression of the seal, shall be filed in the office of the secretary of state. The commission shall be a body corporate, and may lease lands under its jurisdiction, grant easements over, through, under, or across those lands for a lawful purpose, and do any other act necessary to carry out this act.

(2) A writing prepared, owned, used, in the possession of, or retained by the commission in the performance of an official function shall be made available to the public in compliance with Act No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246 of the Michigan Compiled Laws.

History: 1953, Act 232, Eff. Oct. 2, 1953;—Am. 1974, Act 357, Imd. Eff. Dec. 21, 1974;—Am. 1978, Act 413, Imd. Eff. Sept. 28, 1978.

Popular name: Department of Corrections Act

791.213 Corrections commission; gifts, donations, bonds, real or personal property; purpose.

Sec. 13. The commission may receive on behalf of the state of Michigan any grant, devise, bequest, donation, gift or assignment of money, bonds or choses in action, or of any property, real or personal, and accept the same, so that the right and title to the same shall pass to the state of Michigan; and all such bonds, notes or choses in action, or the proceeds thereof when collected, and all other property or thing of value so received by the commission shall be used for the purposes set forth in the grant, devise, bequest, donation, gift or assignment: Provided, That such purposes shall be within the powers conferred on said commission. Whenever it shall be necessary to protect or assert the right or title of the commission to any property so received or derived as aforesaid, or to collect or reduce into possession any bond, note, bill or chose in action, the attorney general is directed to take the necessary and proper proceedings and to bring suit in the name of the commission on behalf of the state of Michigan in any court of competent jurisdiction, state or federal, and to prosecute all such suits.

History: 1953, Act 232, Eff. Oct. 2, 1953.

Popular name: Department of Corrections Act

791.214 Corrections commission; estimation of needs and cost, submission to department of administration.

Sec. 14. The commission shall prepare for submission to the department of administration the estimated needs and costs to operate the department, and the several penal institutions under the jurisdiction of the department, in accordance with the requirements of the laws of this state.

History: 1953, Act 232, Eff. Oct. 2, 1953.

Popular name: Department of Corrections Act

791.215 "Correctional facility" defined.

Sec. 15. As used in this act, "correctional facility" means a facility or institution which is maintained and operated by the department.

History: Add. 1980, Act 303, Imd. Eff. Nov. 26, 1980.

Popular name: Department of Corrections Act

791.216 Establishment of correctional facility; determination of need; comprehensive plan; notice of proposal; local advisory board; public hearing required; procedure; public notice

of hearings; minutes of hearing; finding and notice of final site selection; option to lease, purchase, or use property.

Sec. 16. (1) The department shall develop a comprehensive plan for determining the need for establishing various types of correctional facilities, for selecting the location of a correctional facility, and for determining the size of the correctional facility. The comprehensive plan shall not be implemented until the legislature, by concurrent resolution adopted by a majority of those elected and serving in each house by a record roll call vote, approves the comprehensive plan.

(2) The department shall determine the need for a correctional facility based upon the comprehensive plan developed pursuant to subsection (1).

(3) The department shall publish a notice that it proposes to establish a correctional facility in a particular city, village, or township. The notice shall appear in a newspaper of general circulation in the area. In addition, the department shall notify the following officials:

(a) The state senator and the state representative representing the district in which the correctional facility is to be located.

(b) The president of each state supported college or university whose campus is located within 1 mile of the proposed correctional facility.

(c) The chief elected official of the city, village, or township in which the correctional facility is to be located.

(d) Each member of the governing body of the city, village, or township in which the correctional facility is to be located.

(e) Each member of the county board of commissioners in which the correctional facility is to be located.

(f) The president of the local school board of the local school district in which the correctional facility is to be located.

(g) The president of the intermediate school board of the intermediate school district in which the correctional facility is to be located.

(4) With the notice, the department shall request the chairperson of the county board of commissioners of the county in which the correctional facility is to be located and the person notified pursuant to subsection (3)(c) to create a local advisory board to assist in the identification of potential sites for the correctional facility, to act as a liaison between the department and the local community, and to ensure that the comprehensive plan is being followed by the department. The officials requested to create a local advisory board pursuant to this subsection shall serve as co-chairpersons of that local advisory board.

(5) After the requirements of subsections (1), (2), (3), and (4) are completed and the department has selected a potential site, the department shall hold a public hearing in the city, village, or township in which the potential site is located. The department shall participate in the hearing and shall make a reasonable effort to respond in writing to concerns and questions raised on the record at the hearing. The hearing shall not be held until the local advisory board created by subsection (4) has organized, or sooner than 30 days after the notice is sent pursuant to subsection (3), whichever occurs first.

(6) Hearings the department shall conduct under subsection (5) shall be open to the public and shall be held in a place available to the general public. Any person shall be permitted to attend a hearing except as otherwise provided in this section. A person shall not be required as a condition to attendance at a hearing to register or otherwise provide his or her name or other information or otherwise to fulfill a condition precedent to attendance. A person shall be permitted to address the hearing under written procedures established by the department. A person shall not be excluded from a hearing except for a breach of the peace actually committed at the meeting.

(7) The following provisions shall apply with respect to public notice of hearings required under this section:

(a) A public notice shall always contain the name of the department, its telephone number, and its address.

(b) A public notice shall always be posted at the department's principal office and other locations considered appropriate by the department.

(c) The required public notice for a hearing shall be posted in the office of the county clerk of the county in which the facility is to be located and shall be published in a newspaper of general circulation in the county in which the facility is to be located.

(d) A public notice stating the date, time, and place of the hearing shall be posted at least 10 days before the hearing.

(8) Minutes of each hearing required under this section shall be kept showing the date, time, place, members of the local advisory board present, members of the local advisory board absent, and a summary of the discussions at the hearing. The minutes shall be public records open to public inspection and shall be

available at the address designated on posted public notices pursuant to subsection (7). Copies of the minutes shall be available from the department to the public at the reasonable estimated cost for printing and copying.

(9) On the basis of the information developed by the department during the course of the site selection process, and after community concerns have been responded to by the department pursuant to subsection (5), the commission shall make a final site determination for the correctional facility. The commission shall make a finding that the site determination was made in compliance with this section. This finding and notice of final site selection shall be transmitted in writing by the commission to the local advisory board, the officials described in subsection (3), and the chairpersons of the senate and house appropriations committees.

(10) An option to lease, purchase, or use property may be obtained but shall not be exercised by the state for a correctional facility until the commission has made a final site determination and has transmitted a notice of final site selection as required in subsection (9).

History: Add. 1980, Act 303, Imd. Eff. Nov. 26, 1980.

Popular name: Department of Corrections Act

791.217 Action for noncompliance with site selection process.

Sec. 17. (1) A person who resides in the city, village, or township in which the department has determined a need for a correctional facility may bring an action in a court of proper jurisdiction against the department if the department is not abiding by the site selection process provided in section 16.

(2) An action brought under this section shall not be maintained if it is filed more than 45 days after the commission sends notification of the final site selected to the officials as required in section 16(9).

History: Add. 1980, Act 303, Imd. Eff. Nov. 26, 1980.

Popular name: Department of Corrections Act

791.218 Relations with city, village, or township in which facility located; duties of advisory committee or advisory board.

Sec. 18. After a correctional facility is established, the department shall maintain relations with the city, village, or township in which the facility is located. The department shall request the officials notified under section 16(3)(b) to (g) to appoint an advisory committee or continue the advisory board established pursuant to section 16(4) to meet with the department and correctional facility representatives to assist in the identification of community concerns, to assist in the identification of problems, and to recommend methods for resolving those concerns and problems.

History: Add. 1980, Act 303, Imd. Eff. Nov. 26, 1980.

Popular name: Department of Corrections Act

791.219 Applicability of MCL 791.215 to 791.219 to correctional facilities.

Sec. 19. This section and sections 15 to 18 shall apply to correctional facilities established or proposed after the effective date of the concurrent resolution approving the comprehensive plan and to correctional facilities which are proposed before the effective date of the concurrent resolution approving the comprehensive plan but for which sites have not been selected by the commission as of that date.

History: Add. 1980, Act 303, Imd. Eff. Nov. 26, 1980.

Popular name: Department of Corrections Act

791.220-791.220c Repealed. 1995, Act 28, Imd. Eff. May 10, 1995.

Compiler's note: The repealed sections pertained to definitions, corrections regions, selection and recommendation of sites, placement procedures, and rules.

Popular name: Department of Corrections Act

791.220d Repealed. 1987, Act 176, Imd. Eff. Nov. 19, 1987.

Compiler's note: The repealed section pertained to demolition of Michigan reformatory in Ionia.

Popular name: Department of Corrections Act

791.220e Scott correctional facility; western Wayne correctional facility; capacity limits; increase.

Sec. 20e. (1) Except as provided in subsection (2), not more than 880 prisoners shall be housed at the Scott correctional facility and not more than 925 prisoners shall be housed at the western Wayne correctional facility.

(2) If a new housing unit is constructed within the security perimeter of either facility listed in subsection (1), the capacity limits listed in subsection (1) for that facility are increased by the designated capacity of the

new housing unit.

History: Add. 1985, Act 62, Imd. Eff. June 14, 1985;—Am. 1991, Act 96, Imd. Eff. Aug. 1, 1991;—Am. 1995, Act 20, Imd. Eff. Apr. 12, 1995;—Am. 2002, Act 670, Eff. Mar. 1, 2003.

Popular name: Department of Corrections Act

791.220f Construction of correctional facility; requirements; definition.

Sec. 20f. (1) A correctional facility constructed after the effective date of this section shall be constructed in compliance with at least 1 of the following requirements:

(a) A distance of not less than 300 feet exists between each adjacent residential dwelling and any part of the correctional facility or grounds that is within the security perimeter.

(b) A buffer zone is constructed between the correctional facility and all adjacent residential dwellings. The buffer zone shall be designed to block sight and to block or reduce sound, and may consist of an earth berm or trees or other plants, or materials that would have a substantially similar effect. A fence does not meet the requirements of this subdivision.

(2) As used in this section, “correctional facility” means any facility that houses prisoners under the jurisdiction of the department, but does not include a halfway house, community corrections center, or community residential home.

History: Add. 1989, Act 107, Imd. Eff. June 23, 1989.

Popular name: Department of Corrections Act

791.220g Youth correctional facility.

Sec. 20g. (1) The department may establish a youth correctional facility which shall house only prisoners committed to the jurisdiction of the department who are 19 years of age or less. If the department establishes or contracts with a private vendor for the operation of a youth correctional facility, following intake processing in a department operated facility, the department shall house all male prisoners who are 16 years of age or less at the youth correctional facility unless the department determines that the prisoner should be housed at a different facility for reasons of security, safety, or because of the prisoner's specialized physical or mental health care needs.

(2) Except as provided in subsection (3), a prisoner who is 16 years of age or less and housed at a youth correctional facility shall only be placed in a general population housing unit with prisoners who are 16 years of age or less.

(3) A prisoner who becomes 17 years of age while being housed at a youth correctional facility and who has a satisfactory prison record may remain in a general population housing unit for no more than 1 year with prisoners who are 16 years of age or less.

(4) Except as provided in subsection (3), a prisoner who is 16 years of age or less and housed at a youth correctional facility shall not be allowed to be in the proximity of a prisoner who is 17 years of age or more without the presence and direct supervision of custody personnel in the immediate vicinity.

(5) The department may establish and operate the youth correctional facility or may contract on behalf of the state with a private vendor for the construction or operation, or both, of the youth correctional facility. If the department contracts with a private vendor to construct, rehabilitate, develop, renovate, or operate any existing or anticipated facility pursuant to this section, the department shall require a written certification from the private vendor regarding all of the following:

(a) If practicable to efficiently and effectively complete the project, the private vendor shall follow a competitive bid process for the construction, rehabilitation, development, or renovation of the facility, and this process shall be open to all Michigan residents and firms. The private vendor shall not discriminate against any contractor on the basis of its affiliation or nonaffiliation with any collective bargaining organization.

(b) The private vendor shall make a good faith effort to employ, if qualified, Michigan residents at the facility.

(c) The private vendor shall make a good faith effort to employ or contract with Michigan residents and firms to construct, rehabilitate, develop, or renovate the facility.

(6) If the department contracts with a private vendor for the operation of the youth correctional facility, the department shall require by contract that the personnel employed by the private vendor in the operation of the facility be certified as correctional officers to the same extent as would be required if those personnel were employed in a correctional facility operated by the department. The department also shall require by contract that the private vendor meet requirements specified by the department regarding security, protection of the public, inspections by the department, programming, liability and insurance, conditions of confinement, educational services required under subsection (11), and any other issues the department considers necessary

for the operation of the youth correctional facility. The department shall also require that the contract include provisions to protect the public's interest if the private vendor defaults on the contract. Before finalizing a contract with a private vendor for the construction or operation of the youth correctional facility, the department shall submit the proposed contract to the standing committees of the senate and the house of representatives having jurisdiction of corrections issues, the corrections subcommittees of the standing committees on appropriations of the senate and the house of representatives, and, with regard to proposed construction contracts, the joint committee on capital outlay. A contract between the department and a private vendor for the construction or operation of the youth correctional facility shall be contingent upon appropriation of the required funding. If the department contracts with a private vendor under this section, the selection of that private vendor shall be by open, competitive bid.

(7) The department shall not site a youth correctional facility under this section in a city, village, or township unless the local legislative body of that city, village, or township adopts a resolution approving the location.

(8) A private vendor operating a youth correctional facility under a contract under this section shall not do any of the following, unless directed to do so by the department policy:

- (a) Calculate inmate release and parole eligibility dates.
- (b) Award good time or disciplinary credits, or impose disciplinary time.
- (c) Approve inmates for extensions of limits of confinement.

(9) The youth correctional facility shall be open to visits during all business hours, and during nonbusiness hours unless an emergency prevents it, by any elected state senator or state representative.

(10) Once each year, the department shall report on the operation of the facility. Copies of the report shall be submitted to the chairpersons of the house and senate committees responsible for legislation on corrections or judicial issues, and to the clerk of the house of representatives and the secretary of the senate.

(11) Regardless of whether the department itself operates the youth correctional facility or contracts with a private vendor to operate the youth correctional facility, all of the following educational services shall be provided for juvenile prisoners housed at the facility who have not earned a high school diploma or received a general education certificate (GED):

(a) The department or private vendor shall require that a prisoner whose academic achievement level is not sufficient to allow the prisoner to participate effectively in a program leading to the attainment of a GED certificate participate in classes that will prepare him or her to participate effectively in the GED program, and shall provide those classes in the facility.

(b) The department or private vendor shall require that a prisoner who successfully completes classes described in subdivision (a), or whose academic achievement level is otherwise sufficient, participate in classes leading to the attainment of a GED certificate, and shall provide those classes.

(12) Neither the department nor the private vendor shall seek to have the youth correctional facility authorized as a public school academy under the revised school code, 1976 PA 451, MCL 380.1 to 380.1852.

(13) A private vendor that operates the youth correctional facility under a contract with the department shall provide written notice of its intention to discontinue its operation of the facility. This subsection does not authorize or limit liability for a breach or default of contract. If the reason for the discontinuance is that the private vendor intends not to renew the contract, the notice shall be delivered to the director of the department at least 1 year before the contract expiration date. If the discontinuance is for any other reason, the notice shall be delivered to the director of the department at least 6 months before the date on which the private vendor will discontinue its operation of the facility. This subsection does not authorize or limit liability for a breach or default of contract.

History: Add. 1996, Act 164, Eff. Mar. 31, 1997;—Am. 1998, Act 512, Imd. Eff. Jan. 8, 1999;—Am. 2000, Act 211, Imd. Eff. June 27, 2000.

Popular name: Department of Corrections Act

791.220h Order of restitution; deductions and payments.

Sec. 20h. (1) If a prisoner is ordered to pay restitution to the victim of a crime and the department receives a copy of the restitution order from the court, the department shall deduct 50% of the funds received by the prisoner in a month over \$50.00 for payment of restitution. The department shall promptly forward the restitution amount to the crime victim as provided in the order of restitution when the amount exceeds \$100.00, or the entire amount if the prisoner is paroled, transferred to community programs, or is discharged on the maximum sentence. The department shall notify the prisoner in writing of all deductions and payments made under this section. The requirements of this subsection remain in effect until all of the restitution has been paid.

(2) Any funds owed by the Michigan department of corrections or to be paid on behalf of one or more of

its employees to satisfy a judgment or settlement to a person for a claim that arose while the person was incarcerated, shall be paid to satisfy any order(s) of restitution imposed on the claimant that the department has a record of. The payment shall be made as described in subsection (1). The obligation to pay the funds, described in this section, shall not be compromised. As used in this section, “fund” or “funds” means that portion of a settlement or judgment that remains to be paid to a claimant after statutory and contractual court costs, attorney fees, and expenses of litigation, subject to the court's approval, have been deducted.

(3) The department shall not enter into any agreement with a prisoner that modifies the requirements of subsection (1). Any agreement in violation of this subsection is void.

History: Add. 1996, Act 559, Eff. June 1, 1997.

Popular name: Department of Corrections Act

791.220i Michigan youth correctional facility in Webber township, Lake county; use; interlocal agreements; contract for housing, custody, and care of detainees or inmates from other agencies; requirements; oversight; civil liability; definitions.

Sec. 20i. (1) If the Michigan youth correctional facility established pursuant to section 20g in Webber township, Lake county, Michigan, is not utilized by the department for housing inmates or detainees under the jurisdiction of the department, the private vendor that operates the Michigan youth correctional facility may utilize the facility for housing, custody, and care of detainees or inmates from other local, state, or federal agencies, either by directly contracting with those local, state, or federal agencies or by having 1 or more local, state, or federal agencies enter into an interlocal agreement with Webber township, Lake county, or the county sheriff for Lake county, who in turn may contract with the private vendor for services to be provided under the terms of the interlocal agreement, subject to the requirements of this section. If all contractual factors regarding potential inmates or detainees are equal, the private vendor shall give preference to the admission of inmates or detainees sent from agencies within this state.

(2) Any contract under this section for the housing, custody, and care of detainees or inmates from other local, state, or federal agencies shall require all of the following:

(a) The private vendor that operates the facility shall do all of the following:

(i) Obtain accreditation of the facility by the American correctional association within 24 months after the private vendor commences operations at the facility and maintain that accreditation throughout the term of any contract for the use of the facility.

(ii) Operate the facility in compliance with the applicable standards of the American correctional association.

(b) The personnel employed by the private vendor in the operation of the facility shall meet the employment and training requirements set forth in the applicable standards of the American correctional association, and also shall meet any higher training and employment standards that may be mandated under a contract between the private vendor and a local, state, or federal agency that sends inmates or detainees to the facility.

(c) Any serious incident that occurs at the facility shall be reported immediately to the sheriff of Lake county and the state police.

(3) An inmate or detainee housed at the facility shall not participate in work release, a work camp, or another similar program or activity occurring outside the secure perimeter of the facility.

(4) The facility shall allow the presence of on-site monitors from any local, state, or federal agency that sends inmates or detainees to the facility, for the purpose of monitoring the conditions of confinement of those inmates or detainees. Whenever the private vendor submits a written report to a local, state, or federal agency that sends inmates or detainees to the facility, the private vendor shall send copies of the written report to the township supervisor for Webber township, the board of county commissioners for Lake county, the sheriff of Lake county, and the department.

(5) Personnel employed at the facility by the private vendor who have met the employment and training requirements set forth in the applicable standards of the American correctional association have full authority to perform their duties and responsibilities under law, including, but not limited to, exercising the use of force in the same manner and to the same extent as would be authorized if those personnel were employed in a correctional facility operated by the department.

(6) A contract with a local, state, or federal agency that sends inmates or detainees to the facility shall not require, authorize, or imply a delegation of the authority or responsibility to the private vendor to do any of the following:

(a) Develop or implement procedures for calculating inmate release and parole eligibility dates or recommending the granting or denying of parole, although the private vendor may submit written reports that have been prepared in the ordinary course of business.

(b) Develop or implement procedures for calculating and awarding earned credits, including good time credits, disciplinary credits, or similar credits affecting the length of an inmate's incarceration, approving the type of work inmates may perform and the wage or earned credits, if any, that may be awarded to inmates engaging in that work, and granting, denying, or revoking earned credits.

(7) An inmate or detainee shall not be housed at the facility unless the security classification of the inmate or detainee, as it would be determined by the department if he or she were being housed in a state correctional facility, is level IV or below, and has never previously been above level IV.

(8) Inmates and detainees shall be transferred to and from the facility in a secure manner. Any inmate or detainee housed at the facility who was sent from another state, a local agency outside this state, or the federal government shall be returned to the agency that sent the inmate or detainee upon completion of the inmate's or detainee's term of incarceration in the facility and shall not be released from custody within this state.

(9) The department of corrections is not responsible for oversight of the facility. This state, or any department or agency of this state, is not civilly liable for damages arising out of the operation of the facility.

(10) As used in this section:

(a) "Facility" means the former Michigan youth correctional facility described in subsection (1).

(b) "Security classification" means 1 of 6 levels of restrictiveness enforced in housing units at each state correctional facility, as determined by the department, with security level I being the least restrictive and security level VI being the most restrictive.

(c) "Serious incident" means a disturbance at the facility involving 5 or more inmates or detainees, a death of an inmate or detainee, a felony or attempted felony committed within the facility, or an escape or attempted escape from the facility.

History: Add. 2006, Act 351, Imd. Eff. Sept. 18, 2006.

Popular name: Department of Corrections Act

CHAPTER II BUREAU OF PROBATION.

791.221 Bureau of probation; creation; supervision.

Sec. 21. There is hereby established within the department a bureau of probation. This bureau shall be under the direction and supervision of the assistant director in charge of probation.

History: 1953, Act 232, Eff. Oct. 2, 1953.

Popular name: Department of Corrections Act

791.222 Probation officers; appointment, supervision, and removal; grounds for removal of probation employee; receipt of compensation, gift, or gratuity as misdemeanor; powers and duties of commission.

Sec. 22. (1) The commission shall appoint, supervise, and remove probation officers for the circuit court and recorder's court of this state, in the manner provided by the laws of this state.

(2) The commission may remove a probation employee for incompetency, misconduct, or failure to carry out the orders of the department, or for neglect of duty.

(3) A probation employee who receives compensation from public funds under this act, and receives any compensation, gift, or gratuity from a person under probation or from a person, partnership, association, or corporation for doing or refraining from doing an official act connected with his or her work as a probation employee, or connected with a proceeding pending or about to be instituted in the circuit court or recorder's court is guilty of a misdemeanor.

(4) The commission shall be vested with the powers and duties prescribed by the law with respect to probation recovery camps.

History: 1953, Act 232, Eff. Oct. 2, 1953;—Am. 1979, Act 89, Eff. Apr. 1, 1980.

Compiler's note: Sections 2, 3, and 4 of Act 210 of 1979 provide:

"P.A. 1979, No. 89, section 4, amended; effective date.

"Section 2. The enacting section of Act No. 89 of the Public Acts of 1979, is amended to read as follows:

"Section 4. This amendatory act shall take effect April 1, 1980.

"Effective date of P.A. 1979, Nos. 81 and 89, in certain counties; funds for probation services.

"Section 3. The provisions of Act Nos. 81 and 89 of the Public Acts of 1979 shall not take effect in a county with a population of 1.5 million or more prior to a majority vote of the elected members of the county's board of commissioners to place the question of the creation of a charter commission under the terms of enacted Senate Bill No. 652 before the county electorate. Subsequent to the above action by the board of commissioners, funds appropriated for probation services for a county with a population of 1.5 million or more shall become immediately effective, and shall be retroactive to the extent of the funds provided.

"Implementation of P.A. 1979, Nos. 81 and 89; effect of refusal to provide probation support costs.

"Section 4. Implementation of Act Nos. 81 and 89 of the Public Acts of 1979 shall not be effective in counties which refuse to

provide probation support costs as required in those acts.”

Popular name: Department of Corrections Act

791.223 Assistant director as administrative head; powers and duties; forms for reports by probation officers.

Sec. 23. The assistant director in charge of probation shall be the administrative head of the bureau of probation subject to the authority and supervision of the director of the department of corrections, and the commission. The assistant director shall exercise general supervision over the administration of probation in the circuit court and recorder's court of the state. The assistant director, with the approval of the director, shall appoint personnel other than probation officers necessary for the conduct of the bureau. The assistant director shall endeavor to secure the effective application of the probation system in all courts of the state and the enforcement of probation laws. The assistant director shall supervise the work of probation personnel and shall have access to all probation offices and records. The assistant director shall prescribe the form of records to be kept and reports to be made by probation personnel and shall promulgate general rules which shall regulate the procedure for the administration of probation, including investigation, supervision, case work, record keeping, and accounting. The assistant director shall collect and maintain a complete file of presentence investigations made by probation officers throughout the state. The assistant director shall collect, compile, and publish statistical and other information relating to probation work in all courts and other information of value in probation service. All probation officers shall submit the required reports to the department of corrections on forms to be prescribed and furnished by the department of corrections.

History: 1953, Act 232, Eff. Oct. 2, 1953;—Am. 1979, Act 89, Eff. Apr. 1, 1980.

Compiler's note: Sections 2, 3, and 4 of Act 210 of 1979 provide:

“P.A. 1979, No. 89, section 4, amended; effective date.

“Section 2. The enacting section of Act No. 89 of the Public Acts of 1979, is amended to read as follows:

“Section 4. This amendatory act shall take effect April 1, 1980.

“Effective date of P.A. 1979, Nos. 81 and 89, in certain counties; funds for probation services.

“Section 3. The provisions of Act Nos. 81 and 89 of the Public Acts of 1979 shall not take effect in a county with a population of 1.5 million or more prior to a majority vote of the elected members of the county's board of commissioners to place the question of the creation of a charter commission under the terms of enacted Senate Bill No. 652 before the county electorate. Subsequent to the above action by the board of commissioners, funds appropriated for probation services for a county with a population of 1.5 million or more shall become immediately effective, and shall be retroactive to the extent of the funds provided.

“Implementation of P.A. 1979, Nos. 81 and 89; effect of refusal to provide probation support costs.

“Section 4. Implementation of Act Nos. 81 and 89 of the Public Acts of 1979 shall not be effective in counties which refuse to provide probation support costs as required in those acts.”

Popular name: Department of Corrections Act

Administrative rules: R 791.1101 et seq. of the Michigan Administrative Code.

791.223a Probation personnel as members of state classified civil service; compensation of county probation employees; plan; rents, contractual services, supplies, materials, and equipment.

Sec. 23a. (1) Effective April 1, 1980, all probation personnel in the circuit court of this state and recorder's court of the city of Detroit shall be considered state employees for purposes of supervision and direction. County probation personnel may transfer their employment from a county probation department to state classified civil service pursuant to procedures established by the civil service commission. County probation personnel who wish to remain county employees may elect to do so pursuant to this section. Not later than 6 years after the effective date of this section, all probation employees shall be members of the state classified civil service.

(2) Effective April 1, 1980, all new employees hired as probation personnel shall be members of the state classified civil service.

(3) If a county probation employee remains an employee of the county, the county shall receive an amount from the state equal to the base state civil service salary or county salary, whichever is the lesser. Funds provided by the state pursuant to this section shall be used exclusively for the purpose of compensating county probation employees. The county shall provide for all salary in excess of the state base salary, travel, fringe benefits, and retirement for personnel choosing to remain as county employees.

(4) The civil service commission, in consultation with the department of corrections and affected counties, shall develop a plan effective April 1, 1980, which shall include provisions relating to the transfer of seniority rights, longevity, and accumulated annual and sick leave of county probation office personnel electing to join the state classified civil service. The plan shall specify procedures for the supervision, direction, and disciplinary removal of county probation personnel. If applicable, Act No. 88 of the Public Acts of 1961, as amended, being sections 38.1101 to 38.1105 of the Michigan Compiled Laws, shall apply.

(5) All rents, contractual services, supplies, materials, and equipment which are a county responsibility on the effective date of this section, shall continue to be a county responsibility.

History: Add. 1979, Act 89, Eff. Apr. 1, 1980;—Am. 1979, Act 210, Imd. Eff. Jan. 10, 1980.

Compiler's note: Sections 2, 3, and 4 of Act 210 of 1979 provide:

“P.A. 1979, No. 89, section 4, amended; effective date.

“Section 2. The enacting section of Act No. 89 of the Public Acts of 1979, is amended to read as follows:

“Section 4. This amendatory act shall take effect April 1, 1980.

“Effective date of P.A. 1979, Nos. 81 and 89, in certain counties; funds for probation services.

“Section 3. The provisions of Act Nos. 81 and 89 of the Public Acts of 1979 shall not take effect in a county with a population of 1.5 million or more prior to a majority vote of the elected members of the county's board of commissioners to place the question of the creation of a charter commission under the terms of enacted Senate Bill No. 652 before the county electorate. Subsequent to the above action by the board of commissioners, funds appropriated for probation services for a county with a population of 1.5 million or more shall become immediately effective, and shall be retroactive to the extent of the funds provided.

“Implementation of P.A. 1979, Nos. 81 and 89; effect of refusal to provide probation support costs.

“Section 4. Implementation of Act Nos. 81 and 89 of the Public Acts of 1979 shall not be effective in counties which refuse to provide probation support costs as required in those acts.”

Popular name: Department of Corrections Act

791.224 Repealed. 1979, Act 89, Eff. Apr. 1, 1980.

Compiler's note: The repealed section pertained to division of state into geographical districts and to duties of probation officers.

Popular name: Department of Corrections Act

791.225 Probation service; compensation of probation officers; service grants.

Sec. 25. Where the courts of more than 1 county are served by the same probation officer or officers, the compensation of such officer or officers and the expenses of administering probation service within such counties shall be met jointly by the boards of supervisors therein: Provided, That when it shall appear to the commission that any county is unable to adequately maintain its probation program according to the standards set by the state bureau of probation, then service grants to such an extent and under such conditions as the commission may determine, may be made available to said county: Provided, That uniform rules to be followed in making available such service grants first shall be promulgated by the commission.

History: 1953, Act 232, Eff. Oct. 2, 1953.

Popular name: Department of Corrections Act

791.225a Supervision fees; collection; records; payment; waiver; determination; allocation of money collected for other obligations; administrative costs; enhanced services; unpaid amounts.

Sec. 25a. (1) The department shall collect supervision fees ordered under section 13(2) of chapter II or section 1 or 3c of chapter XI of the code of criminal procedure, 1927 PA 175, MCL 762.13, 771.1, and 771.3c. The department shall maintain records of supervision fees ordered by the court, including records of payment by persons subject to supervision fees and any amounts of supervision fees past due and owing.

(2) A supervision fee is payable when the order of delayed sentence or order of probation is entered, unless the court allows a person who is subject to a supervision fee to pay the fee in monthly installments.

(3) The department shall waive any applicable supervision fee for a person who is transferred to another state under the interstate compact entered into pursuant to 1935 PA 89, MCL 798.101 to 798.103, or the interstate compact entered into pursuant to 2002 PA 40, MCL 3.1011 to 3.1012, for the months during which he or she is in another state. The department shall collect a supervision fee of not more than \$135.00 per month for each month of supervision in this state for an offender transferred to this state under an interstate compact. In determining the amount of the fee, the department shall consider the offender's projected income and financial resources. The department shall use the following table of projected monthly income in determining the amount of the fee:

<u>Projected Monthly Income</u>	<u>Amount of Fee</u>
\$ 0-249.99	\$ 0.00
\$250.00-499.99	\$10.00
\$500.00-749.99	\$25.00
\$750.00-999.99	\$40.00
\$ 1,000.00 or more	5% of monthly income, but not more than \$135.00

The department may collect a higher amount than indicated by the table, up to the maximum of \$135.00 for each month of supervision in this state, if the department determines that the offender has sufficient assets

or other financial resources to warrant the higher amount. If the department collects a higher amount, the amount and the reasons for collecting that amount shall be stated in the department records.

(4) If a person who is subject to a supervision fee is also subject to any combination of fines, costs, restitution orders, assessments, or payments arising out of the same criminal proceeding, the allocation of money collected for those obligations shall be as otherwise provided in the code of criminal procedure, 1927 PA 175, MCL 760.1 to 777.69.

(5) Twenty percent of the money collected by the department under this section shall be allocated for administrative costs incurred by the department in collecting supervision fees and for enhanced services, as described in this subsection. Enhanced services include, but are not limited to, the purchase of services for offenders such as counseling, employment training, employment placement, or education; public transportation expenses related to training, counseling, or employment; enhancement of staff performance through specialized training and equipment purchase; and purchase of items for offender employment. The department shall develop priorities for expending the money for enhanced services in consultation with circuit judges in this state. At the end of each fiscal year, the unexpended balance of the money allocated for administrative costs and enhanced services shall be available for carryforward to be used for the purposes described in this subsection in subsequent fiscal years.

(6) If a person has not paid the full amount of a supervision fee upon being discharged from probation, or upon termination of the period of delayed sentence for a person subject to delayed sentence, the department shall review and compare the actual income of the person during the period of probation or delayed sentence with the income amount projected when the supervision fee was ordered. If the department determines that the person's actual income did not equal or exceed the projected income, the department shall waive any unpaid amount in excess of the total amount that the person would have been ordered to pay if the person's income had been accurately projected, unless the court order states that a higher amount was ordered due to available assets or other financial resources. Any unpaid amounts not waived by the department shall be reported to the department of treasury. The department of treasury shall attempt to collect the unpaid balances pursuant to section 30a of 1941 PA 122, MCL 205.30a. Money collected under this subsection shall not be allocated for the purposes described in subsection (5).

History: Add. 1993, Act 184, Imd. Eff. Sept. 30, 1993;—Am. 2002, Act 502, Imd. Eff. July 16, 2002.

Popular name: Department of Corrections Act

791.226 Repealed. 1972, Act 179, Imd. Eff. June 16, 1972.

Compiler's note: The repealed section excepted certain probation departments from the provisions of this chapter.

Popular name: Department of Corrections Act

791.227 Repealed. 1979, Act 89, Eff. Apr. 1, 1980.

Compiler's note: The repealed section declared act inapplicable to juvenile probation.

Popular name: Department of Corrections Act

791.228 Information on juvenile probationers; assistance; free access to books, records, files, and documents.

Sec. 28. (1) The department of social services and the probate court of this state shall furnish to the department information, on request, concerning any individual having a previous record as a juvenile probationer who comes within the jurisdiction of the department.

(2) A department, board, commission, official, or employee of this state or a political subdivision of this state, shall give and furnish to the assistant director or to his or her agent, any assistance requested by the assistant director or his or her agent in the performance of their duties. Free access shall be given to any books, records, files, and documents in the custody of the department, board, commission, official, or employee, relating to matters within the scope of the powers and duties of the assistant director, except those expressly prohibited by law or court rule.

History: 1953, Act 232, Eff. Oct. 2, 1953;—Am. 1979, Act 89, Eff. Apr. 1, 1980.

Compiler's note: Sections 2, 3, and 4 of Act 210 of 1979 provide:

“P.A. 1979, No. 89, section 4, amended; effective date.

“Section 2. The enacting section of Act No. 89 of the Public Acts of 1979, is amended to read as follows:

“Section 4. This amendatory act shall take effect April 1, 1980.

“Effective date of P.A. 1979, Nos. 81 and 89, in certain counties; funds for probation services.

“Section 3. The provisions of Act Nos. 81 and 89 of the Public Acts of 1979 shall not take effect in a county with a population of 1.5 million or more prior to a majority vote of the elected members of the county's board of commissioners to place the question of the creation of a charter commission under the terms of enacted Senate Bill No. 652 before the county electorate. Subsequent to the above action by the board of commissioners, funds appropriated for probation services for a county with a population of 1.5 million or more

shall become immediately effective, and shall be retroactive to the extent of the funds provided.

“Implementation of P.A. 1979, Nos. 81 and 89; effect of refusal to provide probation support costs.

“Section 4. Implementation of Act Nos. 81 and 89 of the Public Acts of 1979 shall not be effective in counties which refuse to provide probation support costs as required in those acts.”

Popular name: Department of Corrections Act

791.229 Privileged or confidential communications; access to records, reports, and case histories; confidential relationship inviolate.

Sec. 29. All records and reports of investigations made by a probation officer, and all case histories of probationers shall be privileged or confidential communications not open to public inspection. Judges and probation officers shall have access to the records, reports, and case histories. The probation officer, the assistant director of probation, or the assistant director's representative shall permit the attorney general, the auditor general, and law enforcement agencies to have access to the records, reports, and case histories and shall permit designated representatives of a private vendor that operates a youth correctional facility under section 20g to have access to the records, reports, and case histories pertaining to prisoners assigned to the youth correctional facility. The relation of confidence between the probation officer and probationer or defendant under investigation shall remain inviolate.

History: 1953, Act 232, Eff. Oct. 2, 1953;—Am. 1979, Act 89, Eff. Apr. 1, 1980;—Am. 1998, Act 512, Imd. Eff. Jan. 8, 1999.

Compiler's note: Sections 2, 3, and 4 of Act 210 of 1979 provide:

“P.A. 1979, No. 89, section 4, amended; effective date.

“Section 2. The enacting section of Act No. 89 of the Public Acts of 1979, is amended to read as follows:

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“Implementation of P.A. 1979, Nos. 81 and 89; effect of refusal to provide probation support costs.

“Section 4. Implementation of Act Nos. 81 and 89 of the Public Acts of 1979 shall not be effective in counties which refuse to provide probation support costs as required in those acts.”

Popular name: Department of Corrections Act

791.230 Repealed. 1994, Act 131, Imd. Eff. May 19, 1994.

Compiler's note: The repealed section pertained to exemption from disclosure of certain records requested by prisoners.

Popular name: Department of Corrections Act

791.230a Exemptions from disclosure under freedom of information act.

Sec. 30a. The home addresses, telephone numbers, and personnel records of employees of the department, employees of the center for forensic psychiatry, and employees of a psychiatric hospital that houses prisoners are exempt from disclosure under the freedom of information act, Act No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246 of the Michigan Compiled Laws.

History: Add. 1994, Act 433, Imd. Eff. Jan. 6, 1995.

Popular name: Department of Corrections Act

CHAPTER III

BUREAU OF PARDONS AND PAROLES; PAROLE BOARD.

791.231 Bureau of field services; establishment; direction and supervision by deputy director; appointment; duties; assistants.

Sec. 31. There is established within the department a bureau of field services, under the direction and supervision of a deputy director in charge of field services, who shall be appointed by the director and who shall be within the state civil service. The deputy director shall direct and supervise the work of the bureau of field services and shall formulate methods of investigation and supervision and develop various processes in the technique of supervision by the parole staff. The deputy director is responsible for all investigations of persons eligible for release from state penal institutions, and for the general supervision of persons released from penal institutions. The deputy director in charge of the bureau of field services is responsible for the collection and preservation of records and statistics with respect to paroled prisoners as may be required by the director and the chairperson of the parole board. The deputy director shall employ parole officers and assistants as may be necessary, subject to the approval of the director. The deputy director shall select secretarial and other assistants as may be necessary and may obtain permanent quarters for the staff as may be

necessary.

History: 1953, Act 232, Eff. Oct. 2, 1953;—Am. 1982, Act 314, Imd. Eff. Oct. 15, 1982.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibilities of the Bureau of Field Services and the deputy director in charge of field services to the Director of the Michigan Department of Corrections, see E.R.O. No. 1992-3, compiled at MCL 791.303 of the Michigan Compiled Laws.

Popular name: Department of Corrections Act

791.231a Parole board; establishment; appointment, terms, and removal of members; vacancy; salary and expenses; designation and responsibility of chairperson; powers and duties.

Sec. 31a. (1) Beginning October 1, 1992, there is established in the department, a parole board consisting of 10 members who shall be appointed by the director and who shall not be within the state civil service.

(2) Members of the parole board shall be appointed to terms of 4 years each, except that of the members first appointed, 4 shall serve for terms of 4 years each, 3 shall serve for terms of 3 years each, and 3 shall serve for terms of 2 year each. A member may be reappointed. The director may remove a member of the parole board for incompetency, dereliction of duty, malfeasance, misfeasance, or nonfeasance in office. If a vacancy occurs on the parole board, the director shall make an appointment for the unexpired term in the same manner as an original appointment. At least 4 members of the parole board shall be persons who, at the time of their appointment, have never been employed by or appointed to a position in the department of corrections.

(3) Each member of the parole board shall receive an annual salary as established by the legislature and shall be entitled to necessary traveling expenses incurred in the performance of official duties subject to the standardized travel regulations of the state.

(4) The chairperson of the parole board shall be designated by the director. The chairperson of the parole board is responsible for the administration and operation of the parole board. The chairperson may conduct interviews and participate in the parole decision making process. The chairperson shall select secretaries and other assistants as the chairperson considers to be necessary.

(5) The parole board created in this section shall exist for purposes of appointment and training on October 1, 1992, and as of November 15, 1992, shall exercise and perform the powers and duties prescribed and conferred by this act.

History: Add. 1992, Act 181, Imd. Eff. Sept. 22, 1992.

Popular name: Department of Corrections Act

791.232 Repealed. 1992, Act 181, Eff. Nov. 15, 1992.

Compiler's note: The repealed section pertained to establishment of parole board, appointment and qualifications of members and chairperson, and powers and duties of chairperson.

Popular name: Department of Corrections Act

791.233 Grant of parole; conditions; paroles-in-custody; rules.

Sec. 33. (1) The grant of a parole is subject to all of the following:

(a) A prisoner shall not be given liberty on parole until the board has reasonable assurance, after consideration of all of the facts and circumstances, including the prisoner's mental and social attitude, that the prisoner will not become a menace to society or to the public safety.

(b) Except as provided in section 34a, a parole shall not be granted to a prisoner other than a prisoner subject to disciplinary time until the prisoner has served the minimum term imposed by the court less allowances for good time or special good time to which the prisoner may be entitled by statute, except that a prisoner other than a prisoner subject to disciplinary time is eligible for parole before the expiration of his or her minimum term of imprisonment whenever the sentencing judge, or the judge's successor in office, gives written approval of the parole of the prisoner before the expiration of the minimum term of imprisonment.

(c) Except as provided in section 34a, and notwithstanding the provisions of subdivision (b), a parole shall not be granted to a prisoner other than a prisoner subject to disciplinary time sentenced for the commission of a crime described in section 33b(a) to (cc) until the prisoner has served the minimum term imposed by the court less an allowance for disciplinary credits as provided in section 33(5) of 1893 PA 118, MCL 800.33. A prisoner described in this subdivision is not eligible for special parole.

(d) Except as provided in section 34a, a parole shall not be granted to a prisoner subject to disciplinary time until the prisoner has served the minimum term imposed by the court.

(e) A prisoner shall not be released on parole until the parole board has satisfactory evidence that arrangements have been made for such honorable and useful employment as the prisoner is capable of

performing, for the prisoner's education, or for the prisoner's care if the prisoner is mentally or physically ill or incapacitated.

(f) A prisoner whose minimum term of imprisonment is 2 years or more shall not be released on parole unless he or she has either earned a high school diploma or earned its equivalent in the form of a general education development (GED) certificate. The director of the department may waive the restriction imposed by this subdivision as to any prisoner who is over the age of 65 or who was gainfully employed immediately before committing the crime for which he or she was incarcerated. The department of corrections may also waive the restriction imposed by this subdivision as to any prisoner who has a learning disability, who does not have the necessary proficiency in English, or who for some other reason that is not the fault of the prisoner is unable to successfully complete the requirements for a high school diploma or a general education development certificate. If the prisoner does not have the necessary proficiency in English, the department of corrections shall provide English language training for that prisoner necessary for the prisoner to begin working toward the completion of the requirements for a general education development certificate. This subdivision applies to prisoners sentenced for crimes committed after December 15, 1998. In providing an educational program leading to a high school degree or general education development certificate, the department shall give priority to prisoners sentenced for crimes committed on or before December 15, 1998.

(2) Paroles-in-custody to answer warrants filed by local or out-of-state agencies, or immigration officials, are permissible if an accredited agent of the agency filing the warrant calls for the prisoner to be paroled in custody.

(3) Pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, the parole board may promulgate rules not inconsistent with this act with respect to conditions to be imposed upon prisoners paroled under this act.

History: 1953, Act 232, Eff. Oct. 2, 1953;—Am. 1978, Act 81, Eff. Sept. 1, 1978;—Am. 1978, Initiated Law, Eff. Dec. 12, 1978;—Am. 1982, Act 458, Imd. Eff. Dec. 30, 1982;—Am. 1994, Act 217, Eff. Dec. 15, 1998;—Am. 1998, Act 320, Eff. Dec. 15, 1998.

Popular name: Department of Corrections Act

791.233a Repealed. 1982, Act 314, Imd. Eff. Oct. 15, 1982.

Compiler's note: The repealed section pertained to determining prisoner's fitness to be released on parole.

Popular name: Department of Corrections Act

791.233b Eligibility for parole; minimum term.

Sec. 33b. A person convicted and sentenced for the commission of any of the following crimes other than a prisoner subject to disciplinary time is not eligible for parole until the person has served the minimum term imposed by the court less an allowance for disciplinary credits as provided in section 33(5) of Act No. 118 of the Public Acts of 1893, being section 800.33 of the Michigan Compiled Laws, and is not eligible for special parole:

(a) Section 13 of the Michigan penal code, Act No. 328 of the Public Acts of 1931, as amended, being section 750.13 of the Michigan Compiled Laws.

(b) Section 14 of Act No. 328 of the Public Acts of 1931, as amended, being section 750.14 of the Michigan Compiled Laws.

(c) Section 72, 73, or 75 of Act No. 328 of the Public Acts of 1931, as amended, being section 750.72, 750.73, or 750.75 of the Michigan Compiled Laws.

(d) Section 80, 82, 83, 84, 86, 87, 88, 89, or 90 of Act No. 328 of the Public Acts of 1931, as amended, being section 750.80, 750.82, 750.83, 750.84, 750.86, 750.87, 750.88, 750.89, or 750.90 of the Michigan Compiled Laws, or under former section 85 of Act No. 328 of the Public Acts of 1931.

(e) Section 91 or 92 of Act No. 328 of the Public Acts of 1931, as amended, being section 750.91 or 750.92 of the Michigan Compiled Laws.

(f) Section 110, 112, or 116 of Act No. 328 of the Public Acts of 1931, as amended, being section 750.110, 750.112, or 750.116 of the Michigan Compiled Laws.

(g) Section 135, 136b(2), or 136b(3) of Act No. 328 of the Public Acts of 1931, as amended, being section 750.135 or 750.136b of the Michigan Compiled Laws, or under former section 136a of Act No. 328 of the Public Acts of 1931.

(h) Section 158 of Act No. 328 of the Public Acts of 1931, as amended, being section 750.158 of the Michigan Compiled Laws.

(i) Section 160 of Act No. 328 of the Public Acts of 1931, as amended, being section 750.160 of the Michigan Compiled Laws.

(j) Section 171 of Act No. 328 of the Public Acts of 1931, as amended, being section 750.171 of the Michigan Compiled Laws.

(k) Section 196 of Act No. 328 of the Public Acts of 1931, as amended, being section 750.196 of the Michigan Compiled Laws, or under former section 194 of Act No. 328 of the Public Acts of 1931.

(l) Section 204, 205, 206, 207, 208, 209, or 213 of Act No. 328 of the Public Acts of 1931, as amended, being section 750.204, 750.205, 750.206, 750.207, 750.208, 750.209, or 750.213 of the Michigan Compiled Laws.

(m) Section 224, 226, or 227 of Act No. 328 of the Public Acts of 1931, as amended, being section 750.224, 750.226, or 750.227 of the Michigan Compiled Laws.

(n) Section 316, 317, 319, 321, 322, 323, 327, 328, or 329 of Act No. 328 of the Public Acts of 1931, as amended, being section 750.316, 750.317, 750.319, 750.321, 750.322, 750.323, 750.327, 750.328, or 750.329 of the Michigan Compiled Laws.

(o) Former section 333 of Act No. 328 of the Public Acts of 1931.

(p) Section 338, 338a, or 338b of Act No. 328 of the Public Acts of 1931, as amended, being section 750.338, 750.338a, or 750.338b of the Michigan Compiled Laws, or under former section 341 of Act No. 328 of the Public Acts of 1931.

(q) Section 349, 349a, or 350 of Act No. 328 of the Public Acts of 1931, as amended, being section 750.349, 750.349a, or 750.350 of the Michigan Compiled Laws.

(r) Section 357 of Act No. 328 of the Public Acts of 1931, as amended, being section 750.357 of the Michigan Compiled Laws.

(s) Section 386 or 392 of Act No. 328 of the Public Acts of 1931, as amended, being section 750.386 or 750.392 of the Michigan Compiled Laws.

(t) Section 397 or 397a of Act No. 328 of the Public Acts of 1931, as amended, being section 750.397 or 750.397a of the Michigan Compiled Laws.

(u) Section 436 of Act No. 328 of the Public Acts of 1931, as amended, being section 750.436 of the Michigan Compiled Laws.

(v) Section 511 or 517 of Act No. 328 of the Public Acts of 1931, as amended, being section 750.511 or 750.517 of the Michigan Compiled Laws.

(w) Section 520b, 520c, 520d, or 520g of Act No. 328 of the Public Acts of 1931, as amended, being section 750.520b, 750.520c, 750.520d, or 750.520g of the Michigan Compiled Laws.

(x) Section 529, 529a, 530, or 531 of Act No. 328 of the Public Acts of 1931, as amended, being section 750.529, 750.529a, 750.530, or 750.531 of the Michigan Compiled Laws.

(y) Section 544 of Act No. 328 of the Public Acts of 1931, as amended, being section 750.544 of the Michigan Compiled Laws, or under former section 545a of Act No. 328 of the Public Acts of 1931.

(z) Former section 2 of Act No. 38 of the Public Acts of the Extra Session of 1950.

(aa) Former section 6 of Act No. 117 of the Public Acts of 1952.

(bb) Section 1, 2, or 3 of Act No. 302 of the Public Acts of 1968, as amended, being section 752.541, 752.542, or 752.543 of the Michigan Compiled Laws.

(cc) Section 7401(2)(a), 7401(2)(b), 7402(2)(a), or 7402(2)(b) of the public health code, Act No. 368 of the Public Acts of 1978, being section 333.7401 or 333.7402 of the Michigan Compiled Laws.

History: Add. 1978, Initiated Law, Eff. Dec. 12, 1978;—Am. 1982, Act 458, Imd. Eff. Dec. 30, 1982;—Am. 1989, Act 252, Eff. Mar. 29, 1990;—Am. 1994, Act 199, Eff. Oct. 1, 1994;—Am. 1994, Act 217, Eff. Dec. 15, 1998.

Constitutionality: A mandatory sentence of life without parole does not violate the prohibition against cruel and unusual punishments of the Eighth Amendment to the United States Constitution, because the Eighth Amendment contains no proportionality guarantee. Neither does the Eighth Amendment prohibit the imposition of mandatory sentences -- “severe, mandatory penalties may be cruel, but they are not unusual in the constitutional sense ...” -- nor does it require consideration of individualized, mitigating circumstances beyond those cases in which a capital sentence is imposed. Harmelin v Michigan, 501 US 957; 111 S Ct 2680; 115 L Ed2d 836 (1991).

Compiler's note: Section 2 of 1994 PA 217, which provides that “This amendatory act shall take effect on the date that sentencing guidelines are enacted into law after the sentencing commission submits its report to the secretary of the senate and the clerk of the house of representatives pursuant to sections 31 to 34 of chapter IX of the code of criminal procedure, Act No. 175 of the Public Acts of 1927, as added by the amendatory act resulting from House Bill No. 4782 of the 87th Legislature.” was repealed by 1998 PA 316, effective Dec. 15, 1998.

Popular name: Department of Corrections Act

791.233b[1] “Major controlled substance offense” defined.

Sec. 33b. As used in section 34, “major controlled substance offense” means any of the following:

(a) A violation of section 7401(2)(a)(i) or (ii) of the public health code, Act No. 368 of the Public Acts of 1978, being section 333.7401 of the Michigan Compiled Laws.

(b) A violation of section 7403(2)(a)(i) or (ii) of Act No. 368 of the Public Acts of 1978, being section 333.7403 of the Michigan Compiled Laws.

(c) Conspiracy to commit an offense listed in subdivision (a) or (b).

History: Add. 1978, Act 81, Eff. Sept. 1, 1978;—Am. 1988, Act 143, Imd. Eff. June 3, 1988.

Compiler's note: Section 33b, as added by Act 81 of 1978, was compiled as MCL 791.233b[1] to distinguish it from another section 33b added by the initiated law submitted to and approved by the people at the general election held on November 7, 1978.

Popular name: Department of Corrections Act

791.233c “Prisoner subject to disciplinary time” defined.

Sec. 33c. As used in this act, “prisoner subject to disciplinary time” means that term as defined in section 34 of Act No. 118 of the Public Acts of 1893, being section 800.34 of the Michigan Compiled Laws.

History: Add. 1994, Act 217, Eff. Dec. 15, 1998.

Compiler's note: Section 2 of 1994 PA 217, which provides that “This amendatory act shall take effect on the date that sentencing guidelines are enacted into law after the sentencing commission submits its report to the secretary of the senate and the clerk of the house of representatives pursuant to sections 31 to 34 of chapter IX of the code of criminal procedure, Act No. 175 of the Public Acts of 1927, as added by the amendatory act resulting from House Bill No. 4782 of the 87th Legislature.” was repealed by 1998 PA 316, effective Dec. 15, 1998.

Popular name: Department of Corrections Act

791.233d Samples for chemical testing.

Sec. 33d. (1) A prisoner shall not be released on parole, placed in a community placement facility of any kind, including a community corrections center or a community residential home, or discharged upon completion of his or her maximum sentence until he or she has provided samples for chemical testing for DNA identification profiling or a determination of the sample's genetic markers and has provided samples for a determination of his or her secretor status. However, if at the time the prisoner is to be released, placed, or discharged the department of state police already has a sample from the prisoner that meets the requirements of the DNA identification profiling system act, 1990 PA 250, MCL 28.171 to 28.176, the prisoner is not required to provide another sample or pay the fee required under subsection (4).

(2) The samples required to be collected under this section shall be collected by the department and transmitted by the department to the department of state police in the manner prescribed under the DNA identification profiling system act, 1990 PA 250, MCL 28.171 to 28.176.

(3) The department may collect a sample under this section regardless of whether the prisoner consents to the collection. The department is not required to give the prisoner an opportunity for a hearing or obtain a court order before collecting the sample.

(4) A prisoner shall pay an assessment of \$60.00. The department shall transmit the assessments or portions of assessments collected to the department of treasury for the department of state police forensic science division to defray the costs associated with the requirements of DNA profiling and DNA retention prescribed under the DNA identification profiling system act, 1990 PA 250, MCL 28.171 to 28.176.

(5) The DNA profiles of DNA samples received under this section shall only be disclosed as follows:

(a) To a criminal justice agency for law enforcement identification purposes.

(b) In a judicial proceeding as authorized or required by a court.

(c) To a defendant in a criminal case if the DNA profile is used in conjunction with a charge against the defendant.

(d) For an academic, research, statistical analysis, or protocol developmental purpose only if personal identifications are removed.

(6) As used in this section, “sample” means a portion of a prisoner's blood, saliva, or tissue collected from the prisoner.

History: Add. 1990, Act 251, Eff. Sept. 1, 1994;—Am. 1994, Act 164, Eff. Sept. 1, 1994;—Am. 1996, Act 509, Imd. Eff. Jan. 9, 1997;—Am. 2001, Act 86, Eff. Jan. 1, 2002.

Compiler's note: Section 2 of Act 251 of 1990 provides: “This amendatory act shall not take effect unless the sponsor of this bill provides an enacted source of revenue to fully fund the program and the legislature appropriates sufficient money to fund the program it creates.”

Popular name: Department of Corrections Act

791.233e Parole guidelines; rules.

Sec. 33e. (1) The department shall develop parole guidelines that are consistent with section 33(1)(a) and that shall govern the exercise of the parole board's discretion pursuant to sections 34 and 35 as to the release of prisoners on parole under this act. The purpose of the parole guidelines shall be to assist the parole board in making release decisions that enhance the public safety.

(2) In developing the parole guidelines, the department shall consider factors including, but not limited to, the following:

- (a) The offense for which the prisoner is incarcerated at the time of parole consideration.
- (b) The prisoner's institutional program performance.
- (c) The prisoner's institutional conduct.
- (d) The prisoner's prior criminal record. As used in this subdivision, "prior criminal record" means the recorded criminal history of a prisoner, including all misdemeanor and felony convictions, probation violations, juvenile adjudications for acts that would have been crimes if committed by an adult, parole failures, and delayed sentences.
- (e) Other relevant factors as determined by the department, if not otherwise prohibited by law.
- (3) In developing the parole guidelines, the department may consider both of the following factors:
 - (a) The prisoner's statistical risk screening.
 - (b) The prisoner's age.
- (4) The department shall ensure that the parole guidelines do not create disparities in release decisions based on race, color, national origin, gender, religion, or disability.
- (5) The department shall promulgate rules pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws, which shall prescribe the parole guidelines. The department shall submit the proposed rules to the joint committee on administrative rules not later than April 1, 1994. Until the rules take effect, the director shall require that the parole guidelines be considered by the parole board in making release decisions. After the rules take effect, the director shall require that the parole board follow the parole guidelines.
- (6) The parole board may depart from the parole guidelines by denying parole to a prisoner who has a high probability of parole as determined under the parole guidelines or by granting parole to a prisoner who has a low probability of parole as determined under the parole guidelines. A departure under this subsection shall be for substantial and compelling reasons stated in writing. The parole board shall not use a prisoner's gender, race, ethnicity, alienage, national origin, or religion to depart from the recommended parole guidelines.
- (7) Not less than once every 2 years, the department shall review the correlation between the implementation of the parole guidelines and the recidivism rate of paroled prisoners, and shall submit to the joint committee on administrative rules any proposed revisions to the administrative rules that the department considers appropriate after conducting the review.

History: Add. 1992, Act 181, Imd. Eff. Sept. 22, 1992.

Popular name: Department of Corrections Act

791.234 Prisoners subject to jurisdiction of parole board; indeterminate and other sentences; termination of sentence; ineligibility for parole; interview; release on parole; discretion of parole board; appeal to circuit court; cooperation with law enforcement by prisoner violating MCL 333.7401; conviction before effective date of amendatory act; definitions.

Sec. 34. (1) Except as provided in section 34a, a prisoner sentenced to an indeterminate sentence and confined in a state correctional facility with a minimum in terms of years other than a prisoner subject to disciplinary time is subject to the jurisdiction of the parole board when the prisoner has served a period of time equal to the minimum sentence imposed by the court for the crime of which he or she was convicted, less good time and disciplinary credits, if applicable.

(2) Except as provided in section 34a, a prisoner subject to disciplinary time sentenced to an indeterminate sentence and confined in a state correctional facility with a minimum in terms of years is subject to the jurisdiction of the parole board when the prisoner has served a period of time equal to the minimum sentence imposed by the court for the crime of which he or she was convicted.

(3) If a prisoner other than a prisoner subject to disciplinary time is sentenced for consecutive terms, whether received at the same time or at any time during the life of the original sentence, the parole board has jurisdiction over the prisoner for purposes of parole when the prisoner has served the total time of the added minimum terms, less the good time and disciplinary credits allowed by statute. The maximum terms of the sentences shall be added to compute the new maximum term under this subsection, and discharge shall be issued only after the total of the maximum sentences has been served less good time and disciplinary credits, unless the prisoner is paroled and discharged upon satisfactory completion of the parole.

(4) If a prisoner subject to disciplinary time is sentenced for consecutive terms, whether received at the same time or at any time during the life of the original sentence, the parole board has jurisdiction over the prisoner for purposes of parole when the prisoner has served the total time of the added minimum terms. The maximum terms of the sentences shall be added to compute the new maximum term under this subsection, and discharge shall be issued only after the total of the maximum sentences has been served, unless the

prisoner is paroled and discharged upon satisfactory completion of the parole.

(5) If a prisoner other than a prisoner subject to disciplinary time has 1 or more consecutive terms remaining to serve in addition to the term he or she is serving, the parole board may terminate the sentence the prisoner is presently serving at any time after the minimum term of the sentence has been served.

(6) A prisoner sentenced to imprisonment for life for any of the following is not eligible for parole and is instead subject to the provisions of section 44:

(a) First degree murder in violation of section 316 of the Michigan penal code, 1931 PA 328, MCL 750.316.

(b) A violation of section 16(5) or 18(7) of the Michigan penal code, 1931 PA 328, MCL 750.16 and 750.18.

(c) A violation of chapter XXXIII of the Michigan penal code, 1931 PA 328, MCL 750.200 to 750.212a.

(d) A violation of section 17764(7) of the public health code, 1978 PA 368, MCL 333.17764.

(e) First degree criminal sexual conduct in violation of section 520b(2)(c) of the Michigan penal code, 1931 PA 328, MCL 750.520b.

(f) Any other violation for which parole eligibility is expressly denied under state law.

(7) A prisoner sentenced to imprisonment for life, other than a prisoner described in subsection (6), is subject to the jurisdiction of the parole board and may be placed on parole according to the conditions prescribed in subsection (8) if he or she meets any of the following criteria:

(a) Except as provided in subdivision (b) or (c), the prisoner has served 10 calendar years of the sentence for a crime committed before October 1, 1992 or 15 calendar years of the sentence for a crime committed on or after October 1, 1992.

(b) Except as provided in subsection (12), the prisoner has served 20 calendar years of a sentence for violating or conspiring to violate section 7401(2)(a)(i) of the public health code, 1978 PA 368, MCL 333.7401, and has another conviction for a serious crime.

(c) Except as provided in subsection (12), the prisoner has served 17-1/2 calendar years of the sentence for violating or conspiring to violate section 7401(2)(a)(i) of the public health code, 1978 PA 368, MCL 333.7401, and does not have another conviction for a serious crime.

(8) A parole granted to a prisoner under subsection (7) is subject to the following conditions:

(a) At the conclusion of 10 calendar years of the prisoner's sentence and thereafter as determined by the parole board until the prisoner is paroled, discharged, or deceased, and in accordance with the procedures described in subsection (9), 1 member of the parole board shall interview the prisoner. The interview schedule prescribed in this subdivision applies to all prisoners to whom subsection (7) applies, regardless of the date on which they were sentenced.

(b) In addition to the interview schedule prescribed in subdivision (a), the parole board shall review the prisoner's file at the conclusion of 15 calendar years of the prisoner's sentence and every 5 years thereafter until the prisoner is paroled, discharged, or deceased. A prisoner whose file is to be reviewed under this subdivision shall be notified of the upcoming file review at least 30 days before the file review takes place and shall be allowed to submit written statements or documentary evidence for the parole board's consideration in conducting the file review.

(c) A decision to grant or deny parole to the prisoner shall not be made until after a public hearing held in the manner prescribed for pardons and commutations in sections 44 and 45. Notice of the public hearing shall be given to the sentencing judge, or the judge's successor in office, and parole shall not be granted if the sentencing judge, or the judge's successor in office, files written objections to the granting of the parole within 30 days of receipt of the notice of hearing. The written objections shall be made part of the prisoner's file.

(d) A parole granted under subsection (7) shall be for a period of not less than 4 years and subject to the usual rules pertaining to paroles granted by the parole board. A parole granted under subsection (7) is not valid until the transcript of the record is filed with the attorney general whose certification of receipt of the transcript shall be returnable to the office of the parole board within 5 days. Except for medical records protected under section 2157 of the revised judicature act of 1961, 1961 PA 236, MCL 600.2157, the file of a prisoner granted a parole under subsection (7) is a public record.

(9) An interview conducted under subsection (8)(a) is subject to both of the following requirements:

(a) The prisoner shall be given written notice, not less than 30 days before the interview date, stating that the interview will be conducted.

(b) The prisoner may be represented at the interview by an individual of his or her choice. The representative shall not be another prisoner. A prisoner is not entitled to appointed counsel at public expense. The prisoner or representative may present relevant evidence in favor of holding a public hearing as allowed in subsection (8)(b).

(10) In determining whether a prisoner convicted of violating or conspiring to violate section 7401(2)(a)(i)

of the public health code, 1978 PA 368, MCL 333.7401, and sentenced to imprisonment for life before October 1, 1998 is to be released on parole, the parole board shall consider all of the following:

(a) Whether the violation was part of a continuing series of violations of section 7401 or 7403 of the public health code, 1978 PA 368, MCL 333.7401 and 333.7403, by that individual.

(b) Whether the violation was committed by the individual in concert with 5 or more other individuals.

(c) Any of the following:

(i) Whether the individual was a principal administrator, organizer, or leader of an entity that the individual knew or had reason to know was organized, in whole or in part, to commit violations of section 7401 or 7403 of the public health code, 1978 PA 368, MCL 333.7401 and 333.7403, and whether the violation for which the individual was convicted was committed to further the interests of that entity.

(ii) Whether the individual was a principal administrator, organizer, or leader of an entity that the individual knew or had reason to know committed violations of section 7401 or 7403 of the public health code, 1978 PA 368, MCL 333.7401 and 333.7403, and whether the violation for which the individual was convicted was committed to further the interests of that entity.

(iii) Whether the violation was committed in a drug-free school zone.

(iv) Whether the violation involved the delivery of a controlled substance to an individual less than 17 years of age or possession with intent to deliver a controlled substance to an individual less than 17 years of age.

(11) Except as provided in section 34a, a prisoner's release on parole is discretionary with the parole board. The action of the parole board in granting a parole is appealable by the prosecutor of the county from which the prisoner was committed or the victim of the crime for which the prisoner was convicted. The appeal shall be to the circuit court in the county from which the prisoner was committed, by leave of the court.

(12) If the sentencing judge, or his or her successor in office, determines on the record that a prisoner described in subsection (7)(b) or (c) sentenced to imprisonment for life for violating or conspiring to violate section 7401(2)(a)(i) of the public health code, 1978 PA 368, MCL 333.7401, has cooperated with law enforcement, the prisoner is subject to the jurisdiction of the parole board and may be released on parole as provided in subsection (7)(b) or (c) 2-1/2 years earlier than the time otherwise indicated in subsection (7)(b) or (c). The prisoner is considered to have cooperated with law enforcement if the court determines on the record that the prisoner had no relevant or useful information to provide. The court shall not make a determination that the prisoner failed or refused to cooperate with law enforcement on grounds that the defendant exercised his or her constitutional right to trial by jury. If the court determines at sentencing that the defendant cooperated with law enforcement, the court shall include its determination in the judgment of sentence.

(13) An individual convicted of violating or conspiring to violate section 7401(2)(a)(ii) or 7403(2)(a)(ii) of the public health code, 1978 PA 368, MCL 333.7401 and 333.7403, before March 1, 2003 is eligible for parole after serving the minimum of each sentence imposed for that violation or 10 years of each sentence imposed for that violation, whichever is less.

(14) An individual convicted of violating or conspiring to violate section 7401(2)(a)(iii) or 7403(2)(a)(iii) of the public health code, 1978 PA 368, MCL 333.7401 and 333.7403, before March 1, 2003 is eligible for parole after serving the minimum of each sentence imposed for that violation or 5 years of each sentence imposed for that violation, whichever is less.

(15) An individual convicted of violating or conspiring to violate section 7401(2)(a)(iv) or 7403(2)(a)(iv) of the public health code, 1978 PA 368, MCL 333.7401 and 333.7403, before March 1, 2003 who is sentenced to a term of imprisonment that is consecutive to a term of imprisonment imposed for any other violation of section 7401(2)(a)(i) to (iv) or section 7403(2)(a)(i) to (iv) is eligible for parole after serving 1/2 of the minimum sentence imposed for each violation of section 7401(2)(a)(iv) or 7403(2)(a)(iv). This subsection does not apply if the sentence was imposed for a conviction for a new offense committed while the individual is on probation or parole.

(16) The parole board shall provide notice to the prosecuting attorney of the county in which the individual was convicted before granting parole to the individual under subsection (13), (14), or (15).

(17) As used in this section:

(a) "Serious crime" means violating or conspiring to violate article 7 of the public health code, 1978 PA 368, MCL 333.7101 to 333.7545, that is punishable by imprisonment for more than 4 years, or an offense against a person in violation of section 83, 84, 86, 87, 88, 89, 316, 317, 321, 349, 349a, 350, 397, 520b, 520c, 520d, 520g, 529, 529a, or 530 of the Michigan penal code, 1931 PA 328, MCL 750.83, 750.84, 750.86, 750.87, 750.88, 750.89, 750.316, 750.317, 750.321, 750.349, 750.349a, 750.350, 750.397, 750.520b, 750.520c, 750.520d, 750.520g, 750.529, 750.529a, and 750.530.

(b) "State correctional facility" means a facility that houses prisoners committed to the jurisdiction of the

department, and includes a youth correctional facility operated under section 20g by the department or a private vendor.

History: 1953, Act 232, Eff. Oct. 2, 1953;—Am. 1955, Act 107, Imd. Eff. June 3, 1955;—Am. 1957, Act 192, Eff. Sept. 27, 1957;—Am. 1958, Act 210, Eff. Sept. 13, 1958;—Am. 1978, Act 81, Eff. Sept. 1, 1978;—Am. 1982, Act 314, Imd. Eff. Oct. 15, 1982;—Am. 1992, Act 22, Imd. Eff. Mar. 19, 1992;—Am. 1992, Act 181, Imd. Eff. Sept. 22, 1992;—Am. 1994, Act 217, Eff. Dec. 15, 1998;—Am. 1994, Act 345, Eff. Jan. 1, 1995;—Am. 1998, Act 209, Eff. Oct. 1, 1998;—Am. 1998, Act 314, Eff. Oct. 1, 1998;—Am. 1998, Act 315, Eff. Dec. 15, 1998;—Am. 1998, Act 512, Imd. Eff. Jan. 8, 1999;—Am. 1999, Act 191, Eff. Mar. 10, 2000;—Am. 2002, Act 670, Eff. Mar. 1, 2003;—Am. 2004, Act 218, Eff. Oct. 12, 2004;—Am. 2006, Act 167, Eff. Aug. 28, 2006.

Constitutionality: A mandatory sentence of life without parole does not violate the prohibition against cruel and unusual punishments of the Eighth Amendment to the United States Constitution, because the Eighth Amendment contains no proportionality guarantee. Neither does the Eighth Amendment prohibit the imposition of mandatory sentences -- “severe, mandatory penalties may be cruel, but they are not unusual in the constitutional sense ...” -- nor does it require consideration of individualized, mitigating circumstances beyond those cases in which a capital sentence is imposed. *Harmelin v Michigan*, 501 US 957; 111 S Ct 2680; 115 L Ed2d 836 (1991).

In *People v Bullock*, 440 Mich 15; 485 NW2d 866 (1992), the Michigan Supreme Court held that the Michigan Constitution prohibits cruel or unusual punishment while the Eighth Amendment to the US Constitution bars only punishment that is both cruel and unusual. Basing its decision on the textual difference, the Michigan Supreme Court held that the statutory penalty of mandatory life in prison without parole for possession of 650 grams or more of any mixture containing cocaine is so grossly disproportionate as to be cruel or unusual, the result being that those portions of the statutes denying parole consideration are struck down.

Popular name: Department of Corrections Act

***** 791.234a THIS SECTION IS REPEALED BY ACT 107 OF 2009 EFFECTIVE SEPTEMBER 30, 2010 *****

791.234a Placement of prisoner in special alternative incarceration unit.

Sec. 34a. (1) A prisoner sentenced to an indeterminate term of imprisonment under the jurisdiction of the department, regardless of when he or she was sentenced, shall be considered by the department for placement in a special alternative incarceration unit established under section 3 of the special alternative incarceration act, 1988 PA 287, MCL 798.13, if the prisoner meets the eligibility requirements of subsections (2) and (3). For a prisoner committed to the jurisdiction of the department on or after March 19, 1992, the department shall determine before the prisoner leaves the reception center whether the prisoner is eligible for placement in a special alternative incarceration unit, although actual placement may take place at a later date. A determination of eligibility does not guarantee placement in a unit.

(2) To be eligible for placement in a special alternative incarceration unit, the prisoner shall meet all of the following requirements:

(a) The prisoner's minimum sentence does not exceed either of the following limits, as applicable:

(i) Twenty-four months or less for a violation of section 110 of the Michigan penal code, 1931 PA 328, MCL 750.110, if the violation involved any occupied dwelling house.

(ii) Thirty-six months or less for any other crime.

(b) The prisoner has never previously been placed in a special alternative incarceration unit as either a prisoner or a probationer, unless he or she was removed from a special alternative incarceration unit for medical reasons as specified in subsection (7). This subdivision applies only to placements occurring on or after October 1, 2009, and does not apply to a prisoner placed in a special alternative incarceration unit before that date.

(c) The prisoner is physically able to participate in the program.

(d) The prisoner does not appear to have any mental disability that would prevent participation in the program.

(e) The prisoner is serving his or her first prison sentence.

(f) At the time of sentencing, the judge did not prohibit participation in the program in the judgment of sentence.

(g) The prisoner is otherwise suitable for the program, as determined by the department.

(h) The prisoner is not serving a sentence for any of the following crimes:

(i) A violation of section 11, 49, 80, 83, 89, 91, 157b, 158, 207, 260, 316, 317, 327, 328, 335a, 338, 338a, 338b, 349, 349a, 350, 422, 436, 511, 520b, 529, 529a, 531, or 544 of the Michigan penal code, 1931 PA 328, MCL 750.11, 750.49, 750.80, 750.83, 750.89, 750.91, 750.157b, 750.158, 750.207, 750.260, 750.316, 750.317, 750.327, 750.328, 750.335a, 750.338, 750.338a, 750.338b, 750.349, 750.349a, 750.350, 750.422, 750.436, 750.511, 750.520b, 750.529, 750.529a, 750.531, and 750.544.

(ii) A violation of section 145c, 520c, 520d, or 520g of the Michigan penal code, 1931 PA 328, MCL 750.145c, 750.520c, 750.520d, and 750.520g.

(iii) A violation of section 72, 73, or 75 of the Michigan penal code, 1931 PA 328, MCL 750.72, 750.73,

and 750.75.

(iv) A violation of section 86, 112, 136b, 193, 195, 213, 319, 321, 329, or 397 of the Michigan penal code, 1931 PA 328, MCL 750.86, 750.112, 750.136b, 750.193, 750.195, 750.213, 750.319, 750.321, 750.329, and 750.397.

(v) A violation of section 2 of 1968 PA 302, MCL 752.542.

(vi) An attempt to commit a crime described in subparagraphs (i) to (v).

(vii) A violation occurring on or after January 1, 1992, of section 625(4) or (5) of the Michigan vehicle code, 1949 PA 300, MCL 257.625.

(viii) A crime for which the prisoner was punished pursuant to section 10, 11, or 12 of chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.10, 769.11, and 769.12.

(3) A prisoner who is serving a sentence for a violation of section 7401 or 7403 of the public health code, 1978 PA 368, MCL 333.7401 and 333.7403, and who has previously been convicted for a violation of section 7401 or 7403(2)(a), (b), or (e) of the public health code, 1978 PA 368, MCL 333.7401 and 333.7403, is not eligible for placement in a special alternative incarceration unit until after he or she has served the equivalent of the mandatory minimum sentence prescribed by statute for that violation.

(4) If the sentencing judge prohibited a prisoner's participation in the special alternative incarceration program in the judgment of sentence, that prisoner shall not be placed in a special alternative incarceration unit. If the sentencing judge permitted the prisoner's participation in the special alternative incarceration program in the judgment of sentence, that prisoner may be placed in a special alternative incarceration unit if the department determines that the prisoner also meets the requirements of subsections (2) and (3). If the sentencing judge neither prohibited nor permitted a prisoner's participation in the special alternative incarceration program in the judgment of sentence, or if the prisoner is serving his or her sentence regardless of whether or not the judge permitted the prisoner's participation in the program, and the department determines that the prisoner meets the eligibility requirements of subsections (2) and (3), the department shall notify the judge or the judge's successor, the prosecuting attorney for the county in which the prisoner was sentenced, and any victim of the crime for which the prisoner was committed if the victim has submitted to the department a written request for any notification pursuant to section 19(1) of the William Van Regenmorter crime victim's rights act, 1985 PA 87, MCL 780.769, of the proposed placement of the prisoner in the special alternative incarceration unit. The notices shall be sent not later than 30 days before placement is intended to occur. The department shall not place the prisoner in a special alternative incarceration unit unless the sentencing judge, or the judge's successor, notifies the department, in writing, that he or she does not object to the proposed placement. In making the decision on whether or not to object, the judge, or judge's successor, shall review any impact statement submitted pursuant to section 14 of the William Van Regenmorter crime victim's rights act, 1985 PA 87, MCL 780.764, by the victim or victims of the crime of which the prisoner was convicted.

(5) Notwithstanding subsection (4), a prisoner shall not be placed in a special alternative incarceration unit unless the prisoner consents to that placement and agrees that the department may suspend or restrict privileges generally afforded other prisoners including, but not limited to, the areas of visitation, property, mail, publications, commissary, library, and telephone access. However, the department may not suspend or restrict the prisoner's access to the prisoner grievance system.

(6) Beginning September 30, 2008, and notwithstanding subsections (4) and (5), a prisoner shall not be placed in a special alternative incarceration unit unless all of the following conditions are met for the prisoner at the special alternative incarceration unit:

(a) Upon entry into the special alternative incarceration unit, a validated risk and need assessment from which a prisoner-specific transition accountability plan and prisoner-specific programming during program enrollment are utilized.

(b) Interaction with community-based service providers through established prison in-reach services from the community to which the prisoner will return is utilized.

(c) Prisoner discharge planning is utilized.

(d) Community follow-up services are utilized.

(7) A prisoner may be placed in a special alternative incarceration program for a period of not less than 90 days or more than 120 days. If, during that period, the prisoner misses more than 5 days of program participation due to medical excuse for illness or injury occurring after he or she was placed in the program, the period of placement shall be increased by the number of days missed, beginning with the sixth day of medical excuse, up to a maximum of 20 days. However, the total number of days a prisoner may be placed in this program, including days missed due to medical excuse, shall not exceed 120 days. A medical excuse shall be verified by a physician's statement. A prisoner who is medically unable to participate in the program for more than 25 days shall be returned to a state correctional facility but may be reassigned to the program if the

prisoner meets the eligibility requirements of subsections (2) and (3).

(8) Upon certification of completion of the special alternative incarceration program, the prisoner shall be placed on parole. A prisoner paroled under this section shall have conditions of parole as determined appropriate by the parole board and shall be placed on parole for not less than 18 months, or the balance of the prisoner's minimum sentence, whichever is greater, with at least the first 120 days under intensive supervision.

(9) The parole board may suspend or revoke parole for any prisoner paroled under this section subject to sections 39a and 40a. For a prisoner other than a prisoner subject to disciplinary time, if parole is revoked before the expiration of the prisoner's minimum sentence, less disciplinary credits, the parole board shall forfeit, pursuant to section 33(13) of 1893 PA 118, MCL 800.33, all disciplinary credits that were accumulated during special alternative incarceration, and the prisoner shall be considered for parole pursuant to section 35.

(10) On March 19, 1993, and annually after that time, the department shall report to the legislature the impact of the operation of this section, including a report concerning recidivism.

(11) The department shall contract annually for third-party evaluations that report on both of the following:

(a) The implementation of the requirements of subsection (6).

(b) The success of the special alternative incarceration program as revised under subsection (6), as evidenced by the extent to which participants subsequently violate the conditions of their parole, have their orders of parole revoked, or revictimize as evidenced by being arrested or convicted for new offenses, absconding from parole, or having outstanding warrants.

(12) Each prisoner or probationer placed in the special alternative incarceration program shall fully participate in the Michigan prisoner reentry initiative not later than the following date, as applicable:

(a) Each prisoner serving his or her second prison sentence shall participate not later than June 1, 2008.

(b) Each prisoner serving his or her first prison sentence shall participate not later than August 1, 2008.

(c) Each probationer shall participate not later than September 1, 2008.

(13) This section is repealed effective September 30, 2010.

History: Add. 2009, Act 107, Imd. Eff. Oct. 1, 2009.

Compiler's note: Former MCL 791.234a, which pertained to placement in special alternative incarceration unit, was repealed by Act 158 of 2008, Eff. Sept. 30, 2009.

Popular name: Department of Corrections Act

791.235 Release of prisoner on parole; procedure.

Sec. 35. (1) The release of a prisoner on parole shall be granted solely upon the initiative of the parole board. The parole board may grant a parole without interviewing the prisoner. However, beginning on the date on which the administrative rules prescribing parole guidelines pursuant to section 33e(5) take effect, the parole board may grant a parole without interviewing the prisoner only if, after evaluating the prisoner according to the parole guidelines, the parole board determines that the prisoner has a high probability of being paroled and the parole board therefore intends to parole the prisoner. Except as provided in subsection (2), a prisoner shall not be denied parole without an interview before 1 member of the parole board. The interview shall be conducted at least 1 month before the expiration of the prisoner's minimum sentence less applicable good time and disciplinary credits for a prisoner eligible for good time and disciplinary credits, or at least 1 month before the expiration of the prisoner's minimum sentence for a prisoner subject to disciplinary time. The parole board shall consider any statement made to the parole board by a crime victim under the crime victim's rights act, 1985 PA 87, MCL 780.751 to 780.834, or under any other provision of law. The parole board shall not consider any of the following factors in making a parole determination:

(a) A juvenile record that a court has ordered the department to expunge.

(b) Information that is determined by the parole board to be inaccurate or irrelevant after a challenge and presentation of relevant evidence by a prisoner who has received a notice of intent to conduct an interview as provided in subsection (4). This subdivision applies only to presentence investigation reports prepared before April 1, 1983.

(2) Beginning on the date on which the administrative rules prescribing the parole guidelines take effect pursuant to section 33e(5), if, after evaluating a prisoner according to the parole guidelines, the parole board determines that the prisoner has a low probability of being paroled and the parole board therefore does not intend to parole the prisoner, the parole board shall not be required to interview the prisoner before denying parole to the prisoner.

(3) The parole board may consider but shall not base a determination to deny parole solely on either of the following:

(a) A prisoner's marital history.

(b) Prior arrests not resulting in conviction or adjudication of delinquency.

(4) If an interview is to be conducted, the prisoner shall be sent a notice of intent to conduct an interview at least 1 month before the date of the interview. The notice shall state the specific issues and concerns that shall be discussed at the interview and that may be a basis for a denial of parole. A denial of parole shall not be based on reasons other than those stated in the notice of intent to conduct an interview except for good cause stated to the prisoner at or before the interview and in the written explanation required by subsection (12). This subsection does not apply until April 1, 1983.

(5) Except for good cause, the parole board member conducting the interview shall not have cast a vote for or against the prisoner's release before conducting the current interview. Before the interview, the parole board member who is to conduct the interview shall review pertinent information relative to the notice of intent to conduct an interview.

(6) A prisoner may waive the right to an interview by 1 member of the parole board. The waiver of the right to be interviewed shall be given not more than 30 days after the notice of intent to conduct an interview is issued and shall be made in writing. During the interview held pursuant to a notice of intent to conduct an interview, the prisoner may be represented by an individual of his or her choice. The representative shall not be another prisoner or an attorney. A prisoner is not entitled to appointed counsel at public expense. The prisoner or representative may present relevant evidence in support of release. This subsection does not apply until April 1, 1983.

(7) At least 90 days before the expiration of the prisoner's minimum sentence less applicable good time and disciplinary credits for a prisoner eligible for good time or disciplinary credits, or at least 90 days before the expiration of the prisoner's minimum sentence for a prisoner subject to disciplinary time, or the expiration of a 12-month continuance for any prisoner, a parole eligibility report shall be prepared by appropriate institutional staff. The parole eligibility report shall be considered pertinent information for purposes of subsection (5). The report shall include all of the following:

(a) A statement of all major misconduct charges of which the prisoner was found guilty and the punishment served for the misconduct.

(b) The prisoner's work and educational record while confined.

(c) The results of any physical, mental, or psychiatric examinations of the prisoner that may have been performed.

(d) Whether the prisoner fully cooperated with the state by providing complete financial information as required under section 3a of the state correctional facility reimbursement act, 1935 PA 253, MCL 800.403a.

(e) For a prisoner subject to disciplinary time, a statement of all disciplinary time submitted for the parole board's consideration pursuant to section 34 of 1893 PA 118, MCL 800.34.

(8) The preparer of the report shall not include a recommendation as to release on parole.

(9) Psychological evaluations performed at the request of the parole board to assist it in reaching a decision on the release of a prisoner may be performed by the same person who provided the prisoner with therapeutic treatment, unless a different person is requested by the prisoner or parole board.

(10) The parole board may grant a medical parole for a prisoner determined to be physically or mentally incapacitated. A decision to grant a medical parole shall be initiated upon the recommendation of the bureau of health care services and shall be reached only after a review of the medical, institutional, and criminal records of the prisoner.

(11) The department shall submit a petition to the appropriate court under section 434 of the mental health code, 1974 PA 258, MCL 330.1434, for any prisoner being paroled or being released after serving his or her maximum sentence whom the department considers to be a person requiring treatment. The parole board shall require mental health treatment as a special condition of parole for any parolee whom the department has determined to be a person requiring treatment whether or not the petition filed for that prisoner is granted by the court. As used in this subsection, "person requiring treatment" means that term as defined in section 401 of the mental health code, 1974 PA 258, MCL 330.1401.

(12) When the parole board makes a final determination not to release a prisoner, the prisoner shall be provided with a written explanation of the reason for denial and, if appropriate, specific recommendations for corrective action the prisoner may take to facilitate release.

(13) This section does not apply to the placement on parole of a person in conjunction with special alternative incarceration under section 34a(7).

History: 1953, Act 232, Eff. Oct. 2, 1953;—Am. 1982, Act 314, Imd. Eff. Oct. 15, 1982;—Am. 1984, Act 414, Eff. Mar. 29, 1985;—Am. 1992, Act 22, Imd. Eff. Mar. 19, 1992;—Am. 1992, Act 181, Imd. Eff. Sept. 22, 1992;—1994, Act 217, Eff. Dec. 15, 1998;—Am. 1998, Act 315, Eff. Dec. 15, 1998.

Transfer of powers: See MCL 791.301.

791.236 Order of parole; signature by chairperson; notice; rescission; amendment; conditions; supervision; restitution; payment of parole supervision fee; condition requiring payment of assessment or minimum state cost; compliance with sex offenders registration act; violation of certain sections; condition requiring housing in community corrections center or community residential home; condition requiring payment by parolee; review to ensure payment of restitution; report of violation; registration of parolee; electronic monitoring; condition to protect named person; release of prisoner; notice of residence or domicile; monitoring by global positioning monitoring system; "violent felony" defined.

Sec. 36. (1) All paroles shall be ordered by the parole board and shall be signed by the chairperson. Written notice of the order shall be given to the sheriff or other police officer of the municipality or county in which the prisoner was convicted, and to the sheriff or other local police officer of the municipality or county to which the paroled prisoner is sent.

(2) A parole order may be rescinded at the discretion of the parole board for cause before the prisoner is released on parole. A parole shall not be revoked unless an interview with the prisoner is conducted by 1 member of the parole board. The purpose of the interview is to consider and act upon information received by the board after the original parole release decision. A revocation interview shall be conducted within 45 days after receiving the new information. At least 10 days before the interview, the parolee shall receive a copy or summary of the new evidence that is the basis for the interview.

(3) A parole order may be amended at the discretion of the parole board for cause. An amendment to a parole order shall be in writing and is not effective until notice of the amendment is given to the parolee.

(4) When a parole order is issued, the order shall contain the conditions of the parole and shall specifically provide proper means of supervision of the paroled prisoner in accordance with the rules of the bureau of field services.

(5) The parole order shall contain a condition to pay restitution to the victim of the prisoner's crime or the victim's estate if the prisoner was ordered to make restitution pursuant to the William Van Regenmorter crime victim's rights act, 1985 PA 87, MCL 780.751 to 780.834, or the code of criminal procedure, 1927 PA 175, MCL 760.1 to 777.69.

(6) The parole order shall contain a condition requiring the parolee to pay a parole supervision fee as prescribed in section 36a.

(7) The parole order shall contain a condition requiring the parolee to pay any assessment the prisoner was ordered to pay pursuant to section 5 of 1989 PA 196, MCL 780.905.

(8) The parole order shall contain a condition requiring the parolee to pay the minimum state cost prescribed by section 1j of chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.1j, if the minimum state cost has not been paid.

(9) If the parolee is required to be registered under the sex offenders registration act, 1994 PA 295, MCL 28.721 to 28.736, the parole order shall contain a condition requiring the parolee to comply with that act.

(10) If a prisoner convicted of violating or conspiring to violate section 7401(2)(a)(i) or (ii) or 7403(2)(a)(i) or (ii) of the public health code, 1978 PA 368, MCL 333.7401 and 333.7403, is released on parole, the parole order shall contain a notice that if the parolee violates or conspires to violate article 7 of the public health code, 1978 PA 368, MCL 333.7101 to 333.7545, and that violation or conspiracy to violate is punishable by imprisonment for 4 or more years, or commits a violent felony during his or her release on parole, parole shall be revoked.

(11) A parole order issued for a prisoner subject to disciplinary time may contain a condition requiring the parolee to be housed in a community corrections center or a community residential home for not less than the first 30 days but not more than the first 180 days of his or her term of parole. As used in this subsection, "community corrections center" and "community residential home" mean those terms as defined in section 65a.

(12) The parole order shall contain a condition requiring the parolee to pay the following amounts owed by the prisoner, if applicable:

(a) The balance of filing fees and costs ordered to be paid under section 2963 of the revised judicature act of 1961, 1961 PA 236, MCL 600.2963.

(b) The balance of any filing fee ordered to be paid by a federal court under section 1915 of title 28 of the United States Code, 28 USC 1915 and any unpaid order of costs assessed against the prisoner.

(13) In each case in which payment of restitution is ordered as a condition of parole, a parole officer assigned to a case shall review the case not less than twice yearly to ensure that restitution is being paid as

ordered. The final review shall be conducted not less than 60 days before the expiration of the parole period. If the parole officer determines that restitution is not being paid as ordered, the parole officer shall file a written report of the violation with the parole board on a form prescribed by the parole board. The report shall include a statement of the amount of arrearage and any reasons for the arrearage known by the parole officer. The parole board shall immediately provide a copy of the report to the court, the prosecuting attorney, and the victim.

(14) If a parolee is required to register pursuant to the sex offenders registration act, 1994 PA 295, MCL 28.721 to 28.736, the parole officer shall register the parolee as provided in that act.

(15) Beginning August 28, 2006, if a parolee convicted of violating or conspiring to violate section 520b or 520c of the Michigan penal code, 1931 PA 328, MCL 750.520b and 750.520c, other than a parolee who is subject to lifetime electronic monitoring under section 85, is placed on parole, the parole board may require that the parolee be subject to electronic monitoring. The electronic monitoring required under this subsection shall be conducted in the same manner, and shall be subject to the same requirements, as is described in section 85 of this act and section 520n(2) of the Michigan penal code, 1931 PA 328, MCL 750.520n, except as follows:

(a) The electronic monitoring shall continue only for the duration of the term of parole.

(b) A violation by the parolee of any requirement prescribed in section 520n(2)(a) to (c) is a violation of a condition of parole, not a felony violation.

(16) If the parole order contains a condition intended to protect 1 or more named persons, the department shall enter those provisions of the parole order into the corrections management information system, accessible by the law enforcement information network. If the parole board rescinds a parole order described in this subsection, the department within 3 business days shall remove from the corrections management information system the provisions of that parole order.

(17) Each prisoner who is required to be registered under the sex offenders registration act, 1994 PA 295, MCL 28.721 to 28.736, before being released on parole or being released upon completion of his or her maximum sentence, shall provide to the department notice of the location of his or her proposed place of residence or domicile. The department then shall forward that notice of location to the appropriate law enforcement agency as required under section 5(2) of the sex offenders registration act, 1994 PA 295, MCL 28.725. A prisoner who refuses to provide notice of the location of his or her proposed place of residence or domicile or knowingly provides an incorrect notice of the location of his or her proposed place of residence or domicile under this subsection is guilty of a felony punishable by imprisonment for not more than 4 years or a fine of not more than \$2,000.00, or both.

(18) If a prisoner is serving a sentence for violating section 411i of the Michigan penal code, 1931 PA 328, MCL 750.411i (aggravated stalking), and if a victim of that crime has registered to receive notices about that prisoner under the William Van Regenmorter crime victim's rights act, 1985 PA 87, MCL 780.751 to 780.834, the parole order for that prisoner shall require that the prisoner's location be monitored by a global positioning monitoring system during the entire period of the prisoner's parole. If, at the time a prisoner described in this subsection is paroled, no victim of the crime has registered to receive notices about that prisoner under the William Van Regenmorter crime victim's rights act, 1985 PA 87, MCL 780.751 to 780.834, but a victim of the crime subsequently registers to receive those notices, the prisoner's order of parole shall immediately be modified to require that the prisoner's location be monitored by a global positioning system during the balance of the period of that prisoner's parole. As used in this subsection, "global positioning monitoring system" means a system that electronically determines and reports the location of an individual by means of an ankle bracelet transmitter or similar device worn by the individual, which transmits latitude and longitude data to monitoring authorities through global positioning satellite technology but does not include any radio frequency identification technology, global positioning technology, or similar technology that would be implanted in the parolee or would otherwise violate the corporeal body of the parolee.

(19) As used in this section, "violent felony" means an offense against a person in violation of section 82, 83, 84, 86, 87, 88, 89, 316, 317, 321, 349, 349a, 350, 397, 520b, 520c, 520d, 520e, 520g, 529, 529a, or 530 of the Michigan penal code, 1931 PA 328, MCL 750.82, 750.83, 750.84, 750.86, 750.87, 750.88, 750.89, 750.316, 750.317, 750.321, 750.349, 750.349a, 750.350, 750.397, 750.520b, 750.520c, 750.520d, 750.520e, 750.520g, 750.529, 750.529a, and 750.530.

History: 1953, Act 232, Eff. Oct. 2, 1953;—Am. 1982, Act 314, Imd. Eff. Oct. 15, 1982;—Am. 1985, Act 85, Eff. July 10, 1985;—Am. 1989, Act 185, Eff. Oct. 1, 1989;—Am. 1993, Act 346, Eff. May 1, 1994;—Am. 1994, Act 217, Eff. Dec. 15, 1998;—Am. 1994, Act 287, Eff. Oct. 1, 1995;—Am. 1996, Act 554, Eff. June 1, 1997;—Am. 1998, Act 314, Eff. Oct. 1, 1998;—Am. 1998, Act 315, Eff. Dec. 15, 1998;—Am. 1999, Act 271, Eff. July 1, 2000;—Am. 2003, Act 75, Eff. Oct. 1, 2003;—Am. 2006, Act 168, Eff. Aug. 28, 2006;—Am. 2006, Act 316, Imd. Eff. July 20, 2006;—Am. 2006, Act 403, Eff. Dec. 1, 2006;—Am. 2008, Act 191, Imd. Eff. July 10, 2008.

Rendered Friday, January 22, 2010

Page 30

Michigan Compiled Laws Complete Through PA 242 of 2009

791.236a Collection of supervision fee by parole board; limitation; payment; determination of amount; allocation of money collected for other obligations; waiver of fee; determination and collection of fee for offender transferred to state under interstate compact; administrative costs; unpaid amounts.

Sec. 36a. (1) The parole board shall include in each order of parole that the department of corrections shall collect a parole supervision fee of not more than \$135.00 multiplied by the number of months of parole ordered, but not more than 60 months. The fee is payable when the parole order is entered, but the fee may be paid in monthly installments if the parole board approves installment payments for that parolee. In determining the amount of the fee, the parole board shall consider the parolee's projected income and financial resources. The parole board shall use the following table of projected monthly income in determining the amount of the fee to be ordered:

<u>Projected Monthly Income</u>	<u>Amount of Fee</u>
\$ 0-249.99	\$ 0.00
\$250.00-499.99	\$10.00
\$500.00-749.99	\$25.00
\$750.00-999.99	\$40.00
\$ 1,000.00 or more	5% of monthly income, but not more than \$135.00

The parole board may order a higher amount than indicated by the table, up to the maximum of \$135.00 multiplied by the number of months of parole ordered but not more than 60 months, if the parole board determines that the parolee has sufficient assets or other financial resources to warrant the higher amount. If the parole board orders a higher amount, the amount and the reasons for ordering that amount shall be stated in the parole order.

(2) If a person who is subject to a supervision fee is also subject to any combination of fines, costs, restitution, assessments, or payments arising out of the same criminal proceeding, the allocation of money collected for those obligations shall be as provided in section 22 of chapter XV of the code of criminal procedure, 1927 PA 175, MCL 775.22.

(3) A person shall not be subject to more than 1 parole supervision fee at the same time. If a parole supervision fee is ordered for a parolee for any month or months during which that parolee already is subject to a parole supervision fee, the department shall waive the fee having the shorter remaining duration.

(4) The department shall waive the parole supervision fee for a parolee who is transferred to another state under the interstate compact entered into pursuant to 1935 PA 89, MCL 798.101 to 798.103, or the interstate compact entered into pursuant to 2002 PA 40, MCL 3.1011 to 3.1012, for the months during which he or she is in another state. The department shall collect a parole supervision fee of not more than \$135.00 per month for each month of parole supervision in this state for an offender transferred to this state under an interstate compact. In determining the amount of the fee, the department shall consider the parolee's projected income and financial resources. The department shall use the following table of projected monthly income in determining the amount of the fee:

<u>Projected Monthly Income</u>	<u>Amount of Fee</u>
\$ 0-249.99	\$ 0.00
\$250.00-499.99	\$10.00
\$500.00-749.99	\$25.00
\$750.00-999.99	\$40.00
\$ 1,000.00 or more	5% of monthly income, but not more than \$135.00

The department may collect a higher amount than indicated by the table, up to the maximum of \$135.00 for each month of parole supervision in this state, if the department determines that the parolee has sufficient assets or other financial resources to warrant the higher amount. If the department collects a higher amount, the amount and the reasons for collecting that amount shall be stated in the department records.

(5) Twenty percent of the money collected by the department under this section shall be allocated for administrative costs incurred by the department in collecting parole supervision fees and for enhanced services, as described in this subsection. Enhanced services include, but are not limited to, the purchase of services for parolees such as counseling, employment training, employment placement, or education; public

transportation expenses related to training, counseling, or employment; enhancement of staff performance through specialized training and equipment purchase; and purchase of items for parolee employment. At the end of each fiscal year, the unexpended balance of the money allocated for administrative costs and enhanced services shall be available for carryforward to be used for the purposes described in this subsection in subsequent fiscal years.

(6) If a parolee has not paid the full amount of the parole supervision fee upon being discharged from parole, the department shall review and compare the actual income of the person during the period of parole with the income amount projected when the parole supervision fee was ordered. If the department determines that the parolee's actual income did not equal or exceed the projected income, the department shall waive any unpaid amount in excess of the total amount that the parolee would have been ordered to pay if the parolee's income had been accurately projected, unless the parole order states that a higher amount was ordered due to available assets or other financial resources. Any unpaid amounts not waived by the department shall be reported to the department of treasury. The department of treasury shall attempt to collect the unpaid balances pursuant to section 30a of 1941 PA 122, MCL 205.30a. Money collected under this subsection shall not be allocated for the purposes described in subsection (5).

History: Add. 1989, Act 185, Eff. Oct. 1, 1989;—Am. 1993, Act 184, Imd. Eff. Sept. 30, 1993;—Am. 1993, Act 346, Imd. Eff. Jan. 10, 1994;—Am. 2002, Act 502, Imd. Eff. July 16, 2002.

Popular name: Department of Corrections Act

791.237 Paroled or discharged prisoner; furnishing clothing, transportation, and money; repayment of money; cost of implementing section.

Sec. 37. (1) When a prisoner is released upon parole, the department shall provide the prisoner with clothing and a nontransferable ticket to the place in which the paroled prisoner is to reside. At the discretion of the deputy director in charge of the bureau of field services, the paroled prisoner may be advanced the expense of the transportation to the place of residence and a sum of money necessary for reasonable maintenance and subsistence for a 2-week period, as determined by the deputy director. A sum of money given under this section shall be repaid to the state by the paroled prisoner within 180 days after the money is received by the paroled prisoner.

(2) If a prisoner who is discharged without being paroled has less than \$75.00 in his or her immediate possession, has no visible means of support, and has conserved personal funds in a reasonable manner, the department shall furnish to that prisoner the following:

(a) Clothing that is appropriate for the season.

(b) A sum of \$75.00 including that amount already in the prisoner's possession.

(c) Transportation to a place in this state where the prisoner will reside or work or to the place where the prisoner was convicted or sentenced.

(3) When providing for transportation, the department shall:

(a) Use the most economical available public transportation.

(b) Arrange for and purchase the prisoner's transportation ticket.

(c) Assume responsibility for delivering that prisoner to the site of departure and confirming the prisoner's departure from the site.

(4) The cost of implementing this section shall be paid out of the general fund of the state.

History: 1953, Act 232, Eff. Oct. 2, 1953;—Am. 1980, Act 22, Imd. Eff. Mar. 7, 1980;—Am. 1982, Act 314, Imd. Eff. Oct. 15, 1982;—Am. 1994, Act 217, Eff. Dec. 15, 1998.

Compiler's note: Section 2 of 1994 PA 217, which provides that "This amendatory act shall take effect on the date that sentencing guidelines are enacted into law after the sentencing commission submits its report to the secretary of the senate and the clerk of the house of representatives pursuant to sections 31 to 34 of chapter IX of the code of criminal procedure, Act No. 175 of the Public Acts of 1927, as added by the amendatory act resulting from House Bill No. 4782 of the 87th Legislature." was repealed by 1998 PA 316, effective Dec. 15, 1998.

Popular name: Department of Corrections Act

791.238 Custody of paroled prisoner; warrant for return of paroled prisoner; incarceration pending hearing; treatment as escaped prisoner; time during parole violation not counted as time served; forfeiture of good time; committing crime while on parole; construction of parole.

Sec. 38. (1) Each prisoner on parole shall remain in the legal custody and under the control of the department. The deputy director of the bureau of field services, upon a showing of probable violation of parole, may issue a warrant for the return of any paroled prisoner. Pending a hearing upon any charge of parole violation, the prisoner shall remain incarcerated.

(2) A prisoner violating the provisions of his or her parole and for whose return a warrant has been issued by the deputy director of the bureau of field services is treated as an escaped prisoner and is liable, when arrested, to serve out the unexpired portion of his or her maximum imprisonment. The time from the date of the declared violation to the date of the prisoner's availability for return to an institution shall not be counted as time served. The warrant of the deputy director of the bureau of field services is a sufficient warrant authorizing all officers named in the warrant to detain the paroled prisoner in any jail of the state until his or her return to the state penal institution.

(3) If a paroled prisoner fails to return to prison when required by the deputy director of the bureau of field services or if the paroled prisoner escapes while on parole, the paroled prisoner shall be treated in all respects as if he or she had escaped from prison and is subject to be retaken as provided by the laws of this state.

(4) The parole board, in its discretion, may cause the forfeiture of all good time to the date of the declared violation.

(5) A prisoner committing a crime while at large on parole and being convicted and sentenced for the crime shall be treated as to the last incurred term as provided under section 34.

(6) A parole shall be construed as a permit to the prisoner to leave the prison, and not as a release. While at large, the paroled prisoner shall be considered to be serving out the sentence imposed by the court and, if he or she is eligible for good time, shall be entitled to good time the same as if confined in a state correctional facility.

History: 1953, Act 232, Eff. Oct. 2, 1953;—Am. 1968, Act 192, Eff. Nov. 15, 1968;—Am. 1982, Act 314, Imd. Eff. Oct. 15, 1982;—Am. 1994, Act 217, Eff. Dec. 15, 1998.

Compiler's note: Section 2 of 1994 PA 217, which provides that "This amendatory act shall take effect on the date that sentencing guidelines are enacted into law after the sentencing commission submits its report to the secretary of the senate and the clerk of the house of representatives pursuant to sections 31 to 34 of chapter IX of the code of criminal procedure, Act No. 175 of the Public Acts of 1927, as added by the amendatory act resulting from House Bill No. 4782 of the 87th Legislature." was repealed by 1998 PA 316, effective Dec. 15, 1998.

Popular name: Department of Corrections Act

791.239 Paroled prisoner; arrest without warrant.

Sec. 39. A probation officer, a parole officer, a peace officer of this state, or an employee of the department other than a probation or parole officer who is authorized by the director to arrest parole violators may arrest without a warrant and detain in any jail of this state a paroled prisoner, if the probation officer, parole officer, peace officer, or authorized departmental employee has reasonable grounds to believe that the prisoner has violated parole or a warrant has been issued for his or her return under section 38.

History: 1953, Act 232, Eff. Oct. 2, 1953;—Am. 1968, Act 192, Eff. Nov. 15, 1968;—Am. 1982, Act 314, Imd. Eff. Oct. 15, 1982;—Am. 1988, Act 293, Imd. Eff. Aug. 4, 1988.

Popular name: Department of Corrections Act

791.239a Arrest for alleged parole violation; right to preliminary hearing; notice of hearing; rights at hearing; postponement; notice of charges, summary of evidence, and determination of guilt when preliminary hearing not held.

Sec. 39a. (1) Within 10 days after an arrest for an alleged violation of parole, the parolee shall be entitled to a preliminary hearing to determine whether there is probable cause to believe that the conditions of parole have been violated or a fact-finding hearing held pursuant to section 40a.

(2) Prior to the preliminary hearing, the accused parolee shall be given written notice of the charges, time, place, and purpose of the preliminary hearing.

(3) At the preliminary hearing, the accused parolee is entitled to the following rights:

(a) Disclosure of the evidence against him or her.

(b) The right to testify and present relevant witnesses and documentary evidence.

(c) The right to confront and cross-examine adverse witnesses unless the person conducting the preliminary hearing finds on the record that a witness may be subjected to risk of harm if his or her identity is revealed.

(4) A preliminary hearing may be postponed beyond the 10-day time limit on the written request of the parolee, but shall not be postponed by the department.

(5) If a preliminary hearing is not held pursuant to subsection (1), an accused parolee shall be given written notice of the charges against him or her, the time, place and purpose of the fact-finding hearing and a written summary of the evidence to be presented against him or her.

(6) If a preliminary hearing is not held pursuant to subsection (1), an accused parolee may not be found guilty of a violation based on evidence that was not summarized in the notice provided pursuant to subsection

(5) except for good cause stated on the record and included in the written findings of fact provided to the parolee.

History: Add. 1982, Act 314, Imd. Eff. Oct. 15, 1982.

Popular name: Department of Corrections Act

791.240 Prisoner convicted of violent felony; placement on parole; special provisions; history of substance abuse; report on parole violators; definitions.

Sec. 40. (1) If a prisoner serving a sentence for conviction of a violent felony is placed on parole, both of the following special provisions apply:

(a) The supervising parole agent shall make a home call within the first 45 days after the prisoner is placed on parole.

(b) The supervising parole agent shall do a LEIN check not less than quarterly for that parolee and not later than 1 month before a parolee is discharged from parole.

(2) If a prisoner who has a history of substance abuse is placed on parole and is assigned to intensive, maximum, or medium parole supervision, the department shall require as a condition of parole that the parolee submit to substance abuse testing at least twice each month.

(3) Not later than April 1 of each year, the department shall report to the legislature on the number of parolees who are returned to state correctional facilities for a violation of parole involving the use of alcohol or a controlled substance during the preceding calendar year. The report shall specify the number of parolees who are returned to a state correctional facility after 1 such violation, 2 such violations, 3 such violations, 4 such violations, and 5 or more such violations.

(4) The department shall report to the legislature on a quarterly basis both of the following:

(a) The number of parolees who are absconders.

(b) The number of parolees who have been absconders for more than 3 months.

(5) As used in this section:

(a) "LEIN" means the law enforcement information network regulated under the C.J.I.S. policy council act, 1974 PA 163, MCL 28.211 to 28.215.

(b) "Substance abuse" means the taking of alcohol or other drugs at dosages that place an individual's social, economic, psychological, and physical welfare in potential hazard or to the extent that an individual loses the power of self-control as a result of the use of alcohol or drugs, or while habitually under the influence of alcohol or drugs, endangers public health, morals, safety, or welfare, or a combination thereof.

(c) "Violent felony" means that term as defined in section 36.

History: Add. 2006, Act 487, Eff. Jan. 1, 2007.

Compiler's note: Former MCL 791.240, which pertained to violation of parole, was repealed by Act 192 of 1968, Eff. Nov. 15, 1968.

Popular name: Department of Corrections Act

791.240a Parole; revocation; violation; right to fact-finding hearing; time and location of hearing; parolee determined to be indigent; appointment of attorney; notice; rights at hearing; postponement; notice to director if hearing not conducted within certain time period; insufficient evidence; reinstatement to parole status; finding of parole violation; revocation of parole; noncompliance with order to make restitution; "violent felony" defined.

Sec. 40a. (1) After a prisoner is released on parole, the prisoner's parole order is subject to revocation at the discretion of the parole board for cause as provided in this section.

(2) If a paroled prisoner who is required to register pursuant to the sex offenders registration act, 1994 PA 295, MCL 28.721 to 28.736, willfully violates that act, the parole board shall revoke the parole. If a prisoner convicted of violating or conspiring to violate section 7401(2)(a)(i) or (ii) or 7403(2)(a)(i) or (ii) of the public health code, 1978 PA 368, MCL 333.7401 and 333.7403, is released on parole and violates or conspires to violate article 7 of the public health code, 1978 PA 368, MCL 333.7101 to 333.7545, and that violation or conspiracy to violate is punishable by imprisonment for 4 or more years, or commits a violent felony during his or her release on parole, parole shall be revoked.

(3) Within 45 days after a paroled prisoner has been returned or is available for return to a state correctional facility under accusation of a parole violation other than conviction for a felony or misdemeanor punishable by imprisonment under the laws of this state, the United States, or any other state or territory of the United States, the prisoner is entitled to a fact-finding hearing on the charges before 1 member of the parole board or an attorney hearings officer designated by the chairperson of the parole board. The fact-finding hearing shall be conducted only after the accused parolee has had a reasonable amount of time to

prepare a defense. The fact-finding hearing may be held at a state correctional facility or at or near the location of the alleged violation.

(4) If, before a fact-finding hearing begins, the accused parolee alleges that he or she is indigent and requests that an attorney be appointed to represent him or her, the parole board member or attorney hearings officer who will conduct the hearing shall determine whether the accused parolee is indigent. If the accused parolee is determined to be indigent, the parole board member or hearings officer shall cause the appointment of an attorney to represent the accused parolee at the fact-finding hearing. The cost of the appointed attorney shall be paid from the department's general operating budget.

(5) An accused parolee shall be given written notice of the charges against him or her and the time, place, and purpose of the fact-finding hearing. At the fact-finding hearing, the accused parolee may be represented by a retained attorney or an attorney appointed under subsection (4) and is entitled to the following rights:

(a) Full disclosure of the evidence against him or her.

(b) To testify and present relevant witnesses and documentary evidence.

(c) To confront and cross-examine adverse witnesses unless the person conducting the fact-finding hearing finds on the record that a witness is subject to risk of harm if his or her identity is revealed.

(d) To present other relevant evidence in mitigation of the charges.

(6) A fact-finding hearing may be postponed for cause beyond the 45-day time limit on the written request of the parolee, the parolee's attorney, or, if a postponement of the preliminary parole violation hearing required under section 39a has been granted beyond the 10-day time limit, by the parole board.

(7) The director or a deputy director designated by the director shall be notified in writing if the preliminary parole violation hearing is not conducted within the 10-day time limit, and the hearing shall be conducted as soon as possible. The director or a deputy director designated by the director shall be notified in writing if the fact-finding hearing is not conducted within the 45-day time limit, and the hearing shall be conducted as soon as possible. A parolee held in custody shall not be released pending disposition of either hearing.

(8) If the evidence presented is insufficient to support the allegation that a parole violation occurred, the parolee shall be reinstated to parole status.

(9) If the parole board member or hearings officer conducting the fact-finding hearing determines from a preponderance of the evidence that a parole violation has occurred, the parole board member or hearings officer shall present the relevant facts to the parole board and make a recommendation as to the disposition of the charges.

(10) If a preponderance of the evidence supports the allegation that a parole violation occurred, the parole board may revoke parole, and the parolee shall be provided with a written statement of the findings of fact and the reasons for the determination within 60 days after the paroled prisoner has been returned or is available for return to a state correctional facility.

(11) A parolee who is ordered to make restitution under the William Van Regenmorter crime victim's rights act, 1985 PA 87, MCL 780.751 to 780.834, or the code of criminal procedure, 1927 PA 175, MCL 760.1 to 777.69, or to pay an assessment ordered under section 5 of 1989 PA 196, MCL 780.905, as a condition of parole may have his or her parole revoked by the parole board if the parolee fails to comply with the order and if the parolee has not made a good faith effort to comply with the order. In determining whether to revoke parole, the parole board shall consider the parolee's employment status, earning ability, and financial resources, the willfulness of the parolee's failure to comply with the order, and any other special circumstances that may have a bearing on the parolee's ability to comply with the order.

(12) As used in this section, "violent felony" means that term as defined in section 36.

History: Add. 1968, Act 192, Eff. Nov. 15, 1968;—Am. 1982, Act 314, Imd. Eff. Oct. 15, 1982;—Am. 1985, Act 85, Eff. July 10, 1985;—Am. 1993, Act 346, Eff. May 1, 1994;—Am. 2006, Act 315, Imd. Eff. July 20, 2006;—Am. 2006, Act 316, Imd. Eff. July 20, 2006;—Am. 2006, Act 532, Imd. Eff. Dec. 29, 2006.

Popular name: Department of Corrections Act

791.241 Order rescinding or reinstating parole.

Sec. 41. When the parole board has determined the matter it shall enter an order rescinding such parole, or reinstating the original order of parole or enter such other order as it may see fit.

History: 1953, Act 232, Eff. Oct. 2, 1953.

Popular name: Department of Corrections Act

791.242 Final order of discharge; certificate; period of parole.

Sec. 42. (1) If a paroled prisoner has faithfully performed all of the conditions and obligations of parole for the period of time fixed in the order of parole, and has obeyed all of the rules and regulations adopted by the

parole board, the prisoner has served the full sentence required. The parole board shall enter a final order of discharge and issue the paroled prisoner a certificate of discharge.

(2) Parole shall not be granted for a period less than 2 years in a case of murder, actual forcible rape, robbery armed, kidnapping, extortion, or breaking and entering an occupied dwelling in the nighttime unless the maximum time remaining to be served on the sentence is less than 2 years.

(3) Parole shall only be granted for life for a prisoner sentenced under section 520b(2)(b) of the Michigan penal code, 1931 PA 328, MCL 750.520b.

History: 1953, Act 232, Eff. Oct. 2, 1953;—Am. 1961, Act 92, Eff. Sept. 8, 1961;—Am. 2006, Act 170, Eff. Aug. 28, 2006.

Popular name: Department of Corrections Act

791.243 Applications for pardon; filing, information.

Sec. 43. All applications for pardons, reprieves and commutations shall be filed with the parole board upon forms provided therefor by the parole board, and shall contain such information, records and documents as the parole board may by rule require.

History: 1953, Act 232, Eff. Oct. 2, 1953.

Popular name: Department of Corrections Act

791.244 Parole board interview of prisoner serving sentence for first degree murder or sentence of imprisonment for life without parole; board duties upon own initiation or receipt of application for reprieve, commutation, or pardon; files as public record.

Sec. 44. (1) Subject to the constitutional authority of the governor to grant reprieves, commutations, and pardons, 1 member of the parole board shall interview a prisoner serving a sentence for murder in the first degree or a sentence of imprisonment for life without parole at the conclusion of 10 calendar years and thereafter as determined appropriate by the parole board, until such time as the prisoner is granted a reprieve, commutation, or pardon by the governor, or is deceased. The interview schedule prescribed in this subsection applies to all prisoners to whom this section is applicable, regardless of when they were sentenced.

(2) Upon its own initiation of, or upon receipt of any application for, a reprieve, commutation, or pardon, the parole board shall do all of the following, as applicable:

(a) Not more than 60 days after receipt of an application, conduct a review to determine whether the application for a reprieve, commutation, or pardon has merit.

(b) Deliver either the written documentation of the initiation or the original application with the parole board's determination regarding merit, to the governor and retain a copy of each in its file, pending an investigation and hearing.

(c) Within 10 days after initiation, or after determining that an application has merit, forward to the sentencing judge and to the prosecuting attorney of the county having original jurisdiction of the case, or their successors in office, a written notice of the filing of the application or initiation, together with copies of the application or initiation, any supporting affidavits, and a brief summary of the case. Within 30 days after receipt of notice of the filing of any application or initiation, the sentencing judge and the prosecuting attorney, or their successors in office, may file information at their disposal, together with any objections, in writing, which they may desire to interpose. If the sentencing judge and the prosecuting attorney, or their successors in office, do not respond within 30 days, the parole board shall proceed on the application or initiation.

(d) If an application or initiation for commutation is based on physical or mental incapacity, direct the bureau of health care services to evaluate the condition of the prisoner and report on that condition. If the bureau of health care services determines that the prisoner is physically or mentally incapacitated, the bureau shall appoint a specialist in the appropriate field of medicine, who is not employed by the department, to evaluate the condition of the prisoner and to report on that condition. These reports are protected by the doctor-patient privilege of confidentiality, except that these reports shall be provided to the governor for his or her review.

(e) Within 270 days after initiation by the parole board or receipt of an application that the parole board has determined to have merit pursuant to subdivision (a), make a full investigation and determination on whether or not to proceed to a public hearing.

(f) Conduct a public hearing not later than 90 days after making a decision to proceed with consideration of a recommendation for the granting of a reprieve, commutation, or pardon. The public hearing shall be held before a formal recommendation is transmitted to the governor. One member of the parole board who will be involved in the formal recommendation may conduct the hearing, and the public shall be represented by the attorney general or a member of the attorney general's staff.

(g) At least 30 days before conducting the public hearing, provide written notice of the public hearing by

mail to the attorney general, the sentencing trial judge, and the prosecuting attorney, or their successors in office, and each victim who requests notice pursuant to the crime victim's rights act, 1985 PA 87, MCL 780.751 to 780.834.

(h) Conduct the public hearing pursuant to the rules promulgated by the department. Except as otherwise provided in this subdivision, any person having information in connection with the pardon, commutation, or reprieve shall be sworn as a witness. A person who is a victim shall be given an opportunity to address and be questioned by the parole board at the hearing or to submit written testimony for the hearing. In hearing testimony, the parole board shall give liberal construction to any technical rules of evidence.

(i) Transmit its formal recommendation to the governor.

(j) Make all data in its files available to the governor if the parole board recommends the granting of a reprieve, commutation, or pardon.

(3) Except for medical records protected by the doctor-patient privilege of confidentiality, the files of the parole board in cases under this section shall be matters of public record.

History: 1953, Act 232, Eff. Oct. 2, 1953;—Am. 1982, Act 314, Imd. Eff. Oct. 15, 1982;—Am. 1992, Act 181, Imd. Eff. Sept. 22, 1992;—Am. 1999, Act 191, Eff. Mar. 10, 2000.

Popular name: Department of Corrections Act

Administrative rules: R 791.1101 et seq. of the Michigan Administrative Code.

791.245 Hearing; administering oath to witness.

Sec. 45. In the conduct of any hearing or investigation as herein provided any member of the parole board may administer the oath to any witness.

History: 1953, Act 232, Eff. Oct. 2, 1953.

Popular name: Department of Corrections Act

791.246 Decisions and recommendations of parole board; majority vote required.

Sec. 46. All decisions and recommendations of the parole board required by this act shall be by a majority vote of the parole board or a parole board panel created pursuant to section 6(2).

History: Add. 1982, Act 314, Imd. Eff. Oct. 15, 1982.

Popular name: Department of Corrections Act

CHAPTER IIIA

791.251 Hearings division; creation; appointment and duties of hearing administrator; duties of hearings division; supervision and qualifications of hearing officer.

Sec. 51. (1) There is created within the department a hearings division. The division is under the direction and supervision of the hearings administrator who is appointed by the director of the department.

(2) Except as otherwise provided in this section, the hearings division is responsible for each prisoner hearing the department conducts that may result in the loss by a prisoner of a right, including but not limited to any 1 or more of the following matters:

(a) An infraction of a prison rule that may result in punitive segregation, loss of disciplinary credits, or the loss of good time.

(b) A security classification that may result in the placement of a prisoner in administrative segregation.

(c) A special designation that permanently excludes, by department policy or rule, a person under the jurisdiction of the department from community placement.

(d) Visitor restrictions.

(e) High or very high assaultive risk classifications.

(3) Except as otherwise provided in this section, the hearings division is responsible for each prisoner hearing that may result in the accumulation of disciplinary time.

(4) The hearings division is not responsible for a prisoner hearing that is conducted for prisoners transferred under section 11a to an institution of another state pursuant to the interstate corrections compact.

(5) The hearings division is not responsible for a prisoner hearing that is conducted as a result of a minor misconduct charge that would not cause a loss of good time or disciplinary credits, or result in placement in punitive segregation.

(6) Each hearings officer of the department is under the direction and supervision of the hearings division. Each hearings officer hired by the department after October 1, 1979, shall be an attorney.

History: Add. 1979, Act 140, Imd. Eff. Nov. 7, 1979;—Am. 1983, Act 155, Eff. Oct. 1, 1983;—Am. 1994, Act 217, Eff. Dec. 15, 1998;—Am. 1998, Act 204, Imd. Eff. June 30, 1998;—Am. 1998, Act 269, Imd. Eff. July 17, 1998.

Popular name: Department of Corrections Act

791.252 Procedures applicable to prisoner hearing.

Sec. 52. The following procedures shall apply to each prisoner hearing conducted pursuant to section 51(2):

- (a) The parties shall be given an opportunity for an evidentiary hearing without undue delay.
- (b) The parties shall be given reasonable notice of the hearing.
- (c) If a party fails to appear at a hearing after proper service of notice, the hearings officer, if an adjournment is not granted, may proceed with the hearing and make a decision in the absence of the party.
- (d) Each party shall be given an opportunity to present evidence and oral and written arguments on issues of fact.
- (e) A prisoner may not cross-examine a witness, but may submit rebuttal evidence. A prisoner may also submit written questions to the hearings officer to be asked of a witness or witnesses. The hearings officer may present these questions to and receive answers from the witness or witnesses. The questions presented and the evidence received in response to these questions shall become a part of the record. A hearings officer may refuse to present the prisoner's questions to the witness or witnesses. If the hearings officer does not present the questions to the witness or witnesses, the reason for the decision not to present the questions shall be entered into the record.
- (f) The hearings officer may administer an oath or affirmation to a witness in a matter before the officer, certify to official acts, and take depositions.
- (g) The hearings officer may admit and give probative effect to evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs. Irrelevant, immaterial, or unduly repetitious evidence may be excluded. The reason for the exclusion of the evidence shall be entered into the record. An objection to an offer of evidence may be made and shall be noted in the record. The hearings officer, for the purpose of expediting a hearing and if the interest of the parties are not substantially prejudiced by the action, may provide for the submission of all or part of the evidence in written form.
- (h) Evidence, including records and documents in possession of the department of which the hearings officer wishes to avail himself or herself, shall be offered and made a part of the record. A hearings officer may deny access to the evidence to a party if the hearings officer determines that access may be dangerous to a witness or disruptive of normal prison operations. The reason for the denial shall be entered into the record.
- (i) The hearings conducted under this chapter shall be conducted in an impartial manner. On the filing in good faith by a party of a timely and sufficient affidavit of personal bias or disqualification of a hearings officer, the department shall determine the matter as a part of the record of the hearing, and the determination shall be subject to judicial review at the conclusion of the hearing. If a hearings officer is disqualified or it is impracticable for the hearings officer to continue the hearing, another hearings officer may be assigned to continue the hearing unless it is shown that substantial prejudice to a party will result from the continuation.
- (j) Except as otherwise authorized by subdivision (e), a hearings officer, after the notice of the hearing is given, shall not communicate, directly or indirectly, in connection with an issue of fact, with a person or party, except on notice and opportunity for all parties to participate. A hearings officer may communicate with other members of the department and may have the aid and advice of department employees other than employees which have been or are engaged in investigating or prosecuting functions in connection with the hearing or a factually related matter which may be the subject of a hearing.
- (k) A final decision or order of a hearings officer in a hearing shall be made, within a reasonable period, in writing or stated in the record and shall include findings of fact, and shall state any sanction to be imposed against a prisoner as a direct result of a hearing conducted under this chapter. The final decision shall be made on the basis of a preponderance of the evidence presented. Findings of fact shall be based exclusively on the evidence and on matters officially noticed. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting them. A decision or order shall not be made except upon consideration of the record as a whole or a portion of the record as may be cited by a party to the proceeding and as supported by and pursuant to competent, material, and substantial evidence. A copy of the decision or order shall be delivered or mailed immediately to the prisoner. The final disposition shall be posted for the information of the reporting officer.

History: Add. 1979, Act 140, Eff. Feb. 1, 1980.

Popular name: Department of Corrections Act

791.253 Official record of hearing; preparation; contents; exclusion of certain evidence.

Sec. 53. (1) The department shall prepare an official record of a hearing which shall include:

- (a) Questions and offers of proof, objections, and rulings on the objections.
- (b) Matters officially noticed, except a matter so obvious that a record would not serve a useful purpose.

(c) A decision or order by the hearings officer.

(2) The official record shall not include evidence, access to which a hearings officer has determined would be disruptive of normal prison operations. However, on an appeal from a final decision made to a court of this state, that evidence shall be included in the official record.

History: Add. 1979, Act 140, Eff. Feb. 1, 1980.

Popular name: Department of Corrections Act

791.254 Rehearing; order; request; conduct; evidence; amending or vacating decision or order; rules.

Sec. 54. (1) The department shall provide for a rehearing of a matter that was subject to a hearing, pursuant to this section. A rehearing may be ordered by the hearings administrator after a review of the record of the hearing. A rehearing may be held upon the request of a party or upon the department's own motion.

(2) A rehearing shall be ordered if any of the following occurs:

(a) The record of testimony made at the hearing is inadequate for purposes of judicial review.

(b) The hearing was not conducted pursuant to applicable statutes or policies and rules of the department and the departure from the statute, rule, or policy resulted in material prejudice to either party.

(c) The prisoner's due process rights were violated.

(d) The decision of the hearings officer is not supported by competent, material, and substantial evidence on the record as a whole.

(e) It is determined, based on fact, that the hearings officer conducting the hearing was personally biased in favor of 1 of the parties.

(3) A request for a rehearing shall be filed within 30 days after the final decision or order is issued after the initial hearing. A rehearing shall be conducted in the same manner as an original hearing. The evidence received at the rehearing shall be included in the record for department reconsideration and for judicial review. A decision or order may be amended or vacated after the rehearing.

(4) Pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.315 of the Michigan Compiled Laws, the department shall promulgate the rules necessary to implement this chapter.

History: Add. 1979, Act 140, Eff. Feb. 1, 1980;—Am. 1983, Act 155, Eff. Oct. 1, 1983.

Popular name: Department of Corrections Act

791.255 Motion or application for rehearing; exhaustion of administrative remedies; application for direct review in circuit court; transmitting copy of record to court; proof of procedural irregularity; scope of review; action by court.

Sec. 55. (1) A prisoner aggrieved by a final decision or order of a hearings officer shall file a motion or application for rehearing in order to exhaust his or her administrative remedies before seeking judicial review of the final decision or order.

(2) Within 60 days after the date of delivery or mailing of notice of the decision on the motion or application for the rehearing, if the motion or application is denied or within 60 days after the decision of the department or hearing officer on the rehearing, a prisoner aggrieved by a final decision or order may file an application for direct review in the circuit court in the county where the petitioner resides or in the circuit court for Ingham county.

(3) Within 60 days after the application is filed and the department is served, the department shall transmit to the court a certified copy of the entire record of the proceedings. In the case of alleged irregularity in procedure which is not shown on the record, proof may be submitted to the court.

(4) The review shall be confined to the record and any supplemental proofs submitted pursuant to subsection (3). The scope of review shall be limited to whether the department's action is authorized by law or rule and whether the decision or order is supported by competent, material and substantial evidence on the whole record.

(5) The court may affirm, reverse or modify the decision or order or remand the case for further proceedings.

History: Add. 1979, Act 140, Eff. Feb. 1, 1980;—Am. 1983, Act 155, Eff. Oct. 1, 1983.

Popular name: Department of Corrections Act

791.256 Prisoners confined in another state; right to hearings.

Sec. 56. (1) A prisoner sentenced under the laws of this state who is imprisoned in another state pursuant to the interstate corrections compact is entitled to hearings pursuant to subsection (6) of article IV of the

interstate corrections compact.

(2) A prisoner is not entitled to a hearing prior to his or her transfer to an institution of another state pursuant to the interstate corrections compact.

(3) This section shall not impair or abrogate the rights of crime victims, including but not limited to those rights provided under the crime victim's rights act, 1985 PA 87, MCL 780.751 to 780.834.

History: Add. 1994, Act 93, Imd. Eff. Apr. 13, 1994;—Am. 1998, Act 204, Imd. Eff. June 30, 1998.

Popular name: Department of Corrections Act

CHAPTER IV BUREAU OF PENAL INSTITUTIONS.

791.261 Bureau of prisons; establishment, direction and supervision.

Sec. 61. There is hereby established within the department, a bureau of prisons. This bureau shall be under the direction and supervision of the assistant director in charge of the bureau of penal institutions.

History: 1953, Act 232, Eff. Oct. 2, 1953.

Popular name: Department of Corrections Act

791.262 Definitions; administration of state correctional facilities; supervision and inspection of jails and lockups; rules and standards; variance; advice and services; enforcement of orders; residence of sheriff as part of county jail; visitation and inspection by member of commission or designee; records; forms; violation as misdemeanor.

Sec. 62. (1) As used in this section:

(a) "Holding cell" means a cell or room in a facility of a local unit of government that is used for the detention of 1 or more persons awaiting processing, booking, court appearances, transportation to a jail or lockup, or discharge for not to exceed 12 hours.

(b) "Holding center" means a facility that is operated by a local unit of government for the detention of persons awaiting processing, booking, court appearances, transportation to a jail or lockup, or discharge; for not to exceed 24 hours.

(c) "Jail" means a facility that is operated by a local unit of government for the detention of persons charged with, or convicted of, criminal offenses or ordinance violations; persons found guilty of civil or criminal contempt; or a facility which houses prisoners pursuant to an agreement authorized under Act No. 164 of the Public Acts of 1861, being sections 802.1 to 802.21 of the Michigan Compiled Laws, for not more than 1 year.

(d) "Local unit of government" means any county, city, village, township, charter township, community college, college, or university.

(e) "Lockup" means a facility that is operated by a local unit of government for the detention of persons awaiting processing, booking, court appearances, or transportation to a jail, for not to exceed 72 hours.

(f) "State correctional facility" means a facility or institution maintained and operated by the department.

(2) State correctional facilities shall be administered by the bureau of prisons.

(3) The department shall supervise and inspect jails and lockups that are under the jurisdiction of the county sheriff to obtain facts concerning the proper management of the jails and lockups and their usefulness. The department shall promulgate rules and standards promoting the proper, efficient, and humane administration of jails and lockups that are under the jurisdiction of the county sheriff pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.315 of the Michigan Compiled Laws.

(4) The department may grant a variance to the rules and standards promulgated under subsection (3).

(5) Except as provided in subsection (3), the department shall not supervise and inspect, or promulgate rules and standards for the administration of, holding cells, holding centers, or lockups. However, the department shall provide advice and services concerning the efficient and humane administration of holding cells, holding centers, and lockups at the request of a local unit of government.

(6) The commission may enforce any reasonable order with respect to jails and lockups subject to supervision and inspection pursuant to subsection (3) through mandamus or injunction in the circuit court of the county where the jail is located through proceedings instituted by the attorney general on behalf of the commission.

(7) The county board of commissioners may determine whether the sheriff's residence is to be part of the county jail.

(8) The sheriff or the administrator of a jail or lockup, subject to supervision and inspection under subsection (3), shall admit to the jail or lockup any member of the commission or an authorized designee of

the commission, for the purpose of visitation and inspection.

(9) The sheriff or the administrator of a jail or lockup subject to supervision and inspection under subsection (3) shall keep records of a type and in a manner reasonably prescribed by the commission. The commission shall provide the forms required for keeping the records.

(10) Any person who violates subsections (8) or (9) shall be guilty of a misdemeanor.

History: 1953, Act 232, Eff. Oct. 2, 1953;—Am. 1964, Act 111, Eff. Aug. 28, 1964;—Am. 1984, Act 102, Imd. Eff. May 8, 1984;—Am. 1987, Act 251, Eff. Jan. 1, 1988.

Popular name: Department of Corrections Act

Administrative rules: R 791.701 et seq. of the Michigan Administrative Code.

791.262a Local lockup advisory board; creation; appointment, term, and expenses of members; first meeting; election of chairperson; quorum; model policy; review.

Sec. 62a. (1) A local lockup advisory board is created within the bureau of prisons. The board shall consist of 7 members appointed for a period of 4 years. The director of each of the following shall appoint 1 member:

- (a) The department of state police.
- (b) The Michigan association of chiefs of police.
- (c) The Michigan municipal league.
- (d) The Michigan townships association.
- (e) The Michigan judges' association.
- (f) The Michigan district judges' association.
- (g) The Michigan sheriffs' association.

(2) The members appointed under subsection (1) shall serve without compensation but shall be entitled to actual and necessary expenses incurred in the performance of official duties.

(3) The first meeting of the advisory board shall be convened within 60 days after the effective date of this section, at which time the members appointed under subsection (1) shall elect a chairperson. A quorum shall consist of 4 members.

(4) The local lockup advisory board shall develop and promote a model policy for use in the administration of local lockups, holding cells, and holding centers. The model policy shall be developed within 6 months after the date of the first meeting. The advisory board shall convene annually to review the model policy.

History: Add. 1984, Act 102, Imd. Eff. May 8, 1984.

Popular name: Department of Corrections Act

791.262b Housing 2 inmates in county jail cell designed and constructed for single occupancy; conditions; classification system; prohibitions; doors; visual supervision; indemnification for expense or damages; limitation on housing percentage.

Sec. 62b. (1) The rules and standards promulgated under section 62(3) shall not prohibit the housing of 2 inmates in a county jail cell which is designed and constructed for single occupancy and which meets either of the following conditions:

(a) The cell is at least 65 square feet in area and provides unrestricted access to a day area which is available for use by the inmates other than those inmates being disciplined. The day area shall be available at least 14 hours per day and shall contain an average of at least 20 additional square feet of space per inmate.

(b) The cell is at least 55 square feet in area and both of the 2 inmates housed in the cell participate in a day parole program for not less than 32 hours per week.

(2) For purposes of housing inmates as provided for under this section, the sheriff of the county shall develop and implement a classification system classifying the county jail population according to all of the following:

- (a) Behavior characteristics.
- (b) Similar physical characteristics.
- (c) Age.
- (d) Type of crime committed and criminal history.
- (e) Gender.

(3) The classification system under subsection (2) shall be submitted to and approved by the department. Any classification system in effect on December 31, 1987 shall continue in effect until changed as provided in this subsection.

(4) A person who has no prior criminal convictions may only be housed with another inmate who does not have a prior felony conviction.

(5) Cells in which 2 inmates are housed shall have doors which allow visual supervision, and inmates shall be under visual supervision at least every hour.

(6) An inmate who is subject to section 33b(a) to (cc) shall not be housed in a cell with another inmate as provided for under this section, unless the sentencing judge authorizes the inmate for that housing.

(7) If the state incurs any expense or is liable for damages on any judgment for an action brought as the result of a county housing 2 inmates in a cell as provided in this section, the county in which the action arose shall fully indemnify the state for the expense or damages.

(8) No more than 75% of the total inmate population may be housed 2 to a cell and pretrial inmates must be housed in separate cell blocks or housing units from sentenced inmates. In any jail facility with 5 or more floors, pretrial inmates shall be housed on separate floors from sentenced inmates.

History: Add. 1984, Act 145, Imd. Eff. June 25, 1984;—Am. 1987, Act 252, Eff. Jan. 1, 1988;—Am. 1988, Act 492, Imd. Eff. Dec. 29, 1988;—Am. 2000, Act 211, Imd. Eff. June 27, 2000.

Popular name: Department of Corrections Act

Administrative rules: R 791.501 et seq. of the Michigan Administrative Code.

791.262c Housing inmates in county jail cell; conditions; classification system; high security and segregation cells; doors; visual supervision.

Sec. 62c. (1) The rules and standards promulgated under section 62(3) shall not prohibit the housing of 2 or more inmates in a county jail cell which is designed and constructed for housing 2 or more inmates, and which meets all of the following conditions:

(a) The basic cell has at least 52 square feet in area per inmate. This subdivision shall only apply to cells constructed after January 1, 1988.

(b) The cell provides access to a day area which is available for use by other than those being disciplined. The day area shall contain at least 20 additional square feet of space per inmate. This subdivision shall only apply to cells constructed after January 1, 1988.

(c) The cell complies with other rules and standards for multiple occupancy housing in jails, as promulgated under section 62(3).

(2) For purposes of housing inmates as provided for under this section, the sheriff of the county shall develop and implement a classification system classifying the county jail population according to all of the following:

(a) Behavior characteristics.

(b) Similar physical characteristics.

(c) Age.

(d) Type of crime committed and criminal history.

(e) Gender.

(3) The classification system under subsection (2) shall be submitted to and approved by the department.

(4) High security and segregation cells shall not be constructed to house multiple inmates.

(5) Cells in which 2 or more inmates are housed shall have doors which allow visual supervision, and inmates shall be under visual supervision at least every hour.

History: Add. 1987, Act 251, Eff. Jan. 1, 1988;—Am. 1988, Act 293, Imd. Eff. Aug. 4, 1988.

Popular name: Department of Corrections Act

Administrative rules: R 791.501 et seq. of the Michigan Administrative Code.

791.263 Wardens; appointment; personnel; “correctional facility” explained.

Sec. 63. (1) The wardens of the correctional facilities of this state shall be appointed by the director of corrections and shall be within the state civil service. The assistant director in charge of the bureau of correctional facilities shall, subject to the approval of the director, appoint personnel within the bureau as may be necessary. Members of the staff and employees of each correctional facility shall be appointed by the warden subject to the approval of the director.

(2) As used in this section, “correctional facility” does not include a youth correctional facility authorized under section 20g if that facility is operated by a private vendor.

History: 1953, Act 232, Eff. Oct. 2, 1953;—Am. 1998, Act 512, Imd. Eff. Jan. 8, 1999.

Popular name: Department of Corrections Act

791.263a Compensation of correctional or youth correctional facility employees injured by inmate assault or injured during riot; exception; definitions.

Sec. 63a. (1) A person employed by the department of corrections in a correctional facility who is injured as a result of an assault by a prisoner housed in the correctional facility or injured during a riot shall receive his or her full wages by the department of corrections until worker's compensation benefits begin and then

shall receive in addition to worker's compensation benefits a supplement from the department which together with the worker's compensation benefits shall equal but not exceed the weekly net wage of the employee at the time of the injury. This supplement shall only apply while the person is on the department's payroll and is receiving worker's compensation benefits. Fringe benefits normally received by an employee shall be in effect during the time the employee receives the supplement provided by this section from the department.

(2) Subsection (1) also applies to a person who is employed by the department of corrections who, while performing his or her duties in a youth correctional facility, is injured as a result of an assault by a prisoner housed in the youth correctional facility or is injured during a riot in the youth correctional facility. However, subsection (1) does not apply to any person employed by, or retained under contract by, a private vendor that operates a youth correctional facility.

(3) For purposes of this section:

(a) "Correctional facility" means a facility that houses prisoners committed to the jurisdiction of the department, including a community corrections center.

(b) "Youth correctional facility" means a facility authorized under section 20g.

History: Add. 1975, Act 293, Imd. Eff. Dec. 10, 1975;—Am. 1998, Act 512, Imd. Eff. Jan. 8, 1999.

Popular name: Department of Corrections Act

791.264 Classification of prisoners; classification committee; information; filing; investigation; computation of sentence; recomputation based on amended judgment.

Sec. 64. (1) The assistant director in charge of the bureau of correctional facilities shall classify the prisoners in correctional facilities. The assistant director shall appoint a classification committee from the staff of each correctional facility, which committee shall perform services in a manner as the assistant director in charge of the bureau of correctional facilities requires.

(2) Each classification committee shall obtain and file complete information with regard to each prisoner when the prisoner is received in a correctional facility. The clerk of the court and all probation officers and other officials shall send information in their possession or under their control to each classification committee when requested to do so, in the manner as they are directed. When all such existing available records have been assembled, each classification committee shall determine whether any further investigation is necessary, and, if so, shall make that investigation. The information shall be filed with the parole board so as to be readily available when the parole of the prisoner is to be considered.

(3) The length of a prisoner's sentence shall be computed by the record office of the correctional facility, for use by the classification committee, based upon the certified copy of the judgment of sentence delivered with the prisoner. Except as provided in subsection (4), if the judgment of sentence does not specify whether the sentence shall run consecutively to or concurrently with any other sentence that the prisoner is serving, the sentence shall be computed as if it is to be served concurrently.

(4) If the conviction is for a violation of section 193, 195(2), 197(2), 227b, or 349a of the Michigan penal code, 1931 PA 328, MCL 750.193, 750.195, 750.197, 750.227b, and 750.349a, the sentence shall be computed as if it is to be served consecutively, unless the judgment of sentence specifies that the sentence shall run concurrently.

(5) If a sentence that did not specify whether it was to be served concurrently or consecutively is computed under subsection (3) or (4), or if the conviction is for a violation of section 193, 195(2), 197(2), 227b, or 349a of the Michigan penal code, 1931 PA 328, MCL 750.193, 750.195, 750.197, 750.227b, and 750.349a, and the judgment of sentence specifies that the sentence shall run concurrently, the department shall notify the sentencing judge, the prosecuting attorney, and the affected prisoner of the computation not later than 7 days after the sentence is computed.

(6) If, at any time after receiving the original judgment of sentence, the department receives an amended judgment of sentence specifying that the sentence should be computed in a different manner, the sentence shall be recomputed accordingly.

History: 1953, Act 232, Eff. Oct. 2, 1953;—Am. 2000, Act 221, Eff. Oct. 1, 2000.

Popular name: Department of Corrections Act

Administrative rules: R 791.1101 et seq. of the Michigan Administrative Code.

791.265 Transfer or re-transfer of prisoners; confinement in secure correctional facility; "offender" defined; transfer of offenders to country of citizenship; notification to judge and prosecutor; objections; "secure correctional facility" defined.

Sec. 65. (1) Under rules promulgated by the director of the department, the assistant director in charge of the bureau of correctional facilities, except as otherwise provided in this section, may cause the transfer or

re-transfer of a prisoner from a correctional facility to which committed to any other correctional facility, or temporarily to a state institution for medical or surgical treatment. In effecting a transfer, the assistant director of the bureau of correctional facilities may utilize the services of an executive or employee within the department and of a law enforcement officer of the state.

(2) A prisoner who is subject to disciplinary time and is committed to the jurisdiction of the department shall be confined in a secure correctional facility for the duration of his or her minimum sentence, except for periods when the prisoner is away from the secure correctional facility while being supervised by an employee of the department or by an employee of a private vendor that operates a youth correctional facility under section 20g for 1 of the following purposes:

- (a) Visiting a critically ill relative.
- (b) Attending the funeral of a relative.
- (c) Obtaining medical services not otherwise available at the secure correctional facility.
- (d) Participating in a work detail.

(3) As used in this section, "offender" means a citizen of the United States or a foreign country who has been convicted of a crime and been given a sentence in a country other than the country of which he or she is a citizen. If a treaty is in effect between the United States and a foreign country, which provides for the transfer of offenders from the jurisdiction of 1 of the countries to the jurisdiction of the country of which the offender is a citizen, and if the offender requests the transfer, the governor of this state or a person designated by the governor may give the approval of this state to a transfer of an offender, if the conditions of the treaty are satisfied.

(4) Not less than 45 days before approval of a transfer pursuant to subsection (3) from this state to another country, the governor, or the governor's designee, shall notify the sentencing judge and the prosecuting attorney of the county having original jurisdiction, or their successors in office, of the request for transfer. The notification shall indicate any name changes of the offender subsequent to sentencing. Within 20 days after receiving such notification, the judge or prosecutor may send to the governor, or the governor's designee, information about the criminal action against the offender or objections to the transfer. Objections to the transfer shall not preclude approval of the transfer.

(5) As used in this section, "secure correctional facility" means a facility that houses prisoners under the jurisdiction of the department according to the following requirements:

- (a) The facility is enclosed by a locked fence or wall that is designed to prevent prisoners from leaving the enclosed premises and that is patrolled by correctional officers.
- (b) Prisoners in the facility are restricted to the area inside the fence or wall.
- (c) Prisoners are under guard by correctional officers 7 days per week, 24 hours per day.

History: 1953, Act 232, Eff. Oct. 2, 1953;—Am. 1980, Act 150, Imd. Eff. June 10, 1980;—Am. 1982, Act 179, Imd. Eff. June 14, 1982;—Am. 1994, Act 217, Eff. Dec. 15, 1998;—Am. 1998, Act 512, Imd. Eff. Jan. 8, 1999.

Popular name: Department of Corrections Act

Administrative rules: R 791.1101 et seq. of the Michigan Administrative Code.

791.265a Extending limits of confinement; rules; escape from custody; eligibility for extensions of limits of confinement; placement in community residential home; definitions.

Sec. 65a. (1) Under prescribed conditions, the director may extend the limits of confinement of a prisoner when there is reasonable assurance, after consideration of all facts and circumstances, that the prisoner will not become a menace to society or to the public safety, by authorizing the prisoner to do any of the following:

(a) Visit a specifically designated place or places. An extension of limits may be granted only to a prisoner housed in a state correctional facility to permit a visit to a critically ill relative, attendance at the funeral of a relative, or contacting prospective employers. The maximum amount of time a prisoner is eligible for an extension of the limits of confinement under this subdivision shall not exceed a cumulative total period of 30 days.

(b) Obtain medical services not otherwise available to a prisoner housed in a state correctional facility.

(c) Work at paid employment, participate in a training or educational program, or participate in a community residential drug treatment program while continuing as a prisoner housed on a voluntary basis at a community corrections center or in a community residential home.

(2) The director shall promulgate rules to implement this section.

(3) The willful failure of a prisoner to remain within the extended limits of his or her confinement or to return within the time prescribed to an institution or facility designated by the director shall be considered an escape from custody as provided in section 193 of the Michigan penal code, 1931 PA 328, MCL 750.193.

(4) Subject to subsection (8), a prisoner, other than a prisoner subject to disciplinary time, who is convicted of a crime of violence or any assaultive crime is not eligible for the extensions of the limits of confinement provided in subsection (1) until the minimum sentence imposed for the crime has less than 180 days remaining.

(5) Subject to subsection (8), a prisoner subject to disciplinary time is not eligible for the extensions of the limits of confinement provided in subsection (1) until he or she has served the minimum sentence imposed for the crime.

(6) However, notwithstanding subsections (4) or (5), if the reason for the extension is to visit a critically ill relative, attend the funeral of a relative, or obtain medical services not otherwise available, the director may allow the extension under escort as provided in subsection (1).

(7) A prisoner serving a sentence for murder in the first degree is not eligible for the extensions of confinement under this section until a parole release date is established by the parole board and in no case before serving 15 calendar years with a good institutional adjustment.

(8) A prisoner who is convicted of a crime of violence or any assaultive crime, and whose minimum sentence imposed for the crime is 10 years or more, shall not be placed in a community residential home during any portion of his or her sentence.

(9) As used in this section:

(a) "Community corrections center" means a facility either contracted for or operated by the department in which a security staff is on duty 7 days per week, 24 hours per day.

(b) "Community residential home" means a location where electronic monitoring of prisoner presence is provided by the department 7 days per week, 24 hours per day, except that the department may waive the requirement that electronic monitoring be provided as to any prisoner who is within 3 months of his or her parole date.

(c) "State correctional facility" means a facility owned or leased by the department. State correctional facility does not include a community corrections center or community residential home.

History: Add. 1974, Act 68, Imd. Eff. Apr. 1, 1974;—Am. 1987, Act 271, Imd. Eff. Dec. 29, 1987;—Am. 1988, Act 272, Eff. Dec. 1, 1988;—Am. 1994, Act 217, Eff. Dec. 15, 1998;—Am. 1997, Act 13, Imd. Eff. June 5, 1997;—Am. 1998, Act 315, Eff. Dec. 15, 1998.

Popular name: Department of Corrections Act

791.265b Definitions; transfer of mentally or physically disabled prisoner to medical institution; duration; determination of mental or physical disability; financial responsibility of department; regulations.

Sec. 65b. (1) As used in this section:

(a) "Medical institution" means that term as defined in section 106(2) of Act No. 280 of the Public Acts of 1939, as amended, being section 400.106 of the Michigan Compiled Laws.

(b) "Mentally or physically disabled prisoner" means a prisoner whose physical or mental health has deteriorated to a point which renders the prisoner a minimal threat to society.

(c) "Office of health care" means the office of health care in the department of corrections.

(2) The director may transfer a mentally or physically disabled prisoner to a medical institution for treatment and care. The transfer shall be effective for the duration of the prisoner's sentence, the duration of the existing medical condition causing the prisoner to be mentally or physically disabled, or for any other length of time considered necessary by the director, but shall not exceed the term of the sentence.

(3) The office of health care, upon the request of the director, shall determine whether a prisoner is mentally or physically disabled. The department of corrections shall continue its financial responsibility for the maintenance and care of any inmate transferred to a medical institution under this act. The department shall develop regulations for reimbursement to the institutions to which the parties are transferred.

History: Add. 1980, Act 491, Imd. Eff. Jan. 21, 1981.

Popular name: Department of Corrections Act

791.265c Work camp; construction, maintenance, and operation; purpose; assignment of prisoners; displacement of employed persons or workers on strike or locked out; agreement of bargaining unit; citizens advisory committee; report; escape; reimbursement of department; collecting and dispersing wages; amount of wages; rules.

Sec. 65c. (1) As used in this section, "work camp" means a correctional facility that houses prisoners who are made available for work as provided in subsection (3).

(2) The department may construct, maintain, and operate work camps for the purpose of housing prisoners who are under its jurisdiction.

(3) Prisoners assigned to work camps may be provided an opportunity to do any of the following, as long as the department has reasonable cause to believe the prisoner will honor the trust placed in him or her by such an assignment:

(a) Perform meaningful work at paid employment in the community.

(b) Provide labor on public works projects.

(c) Perform meaningful work on projects that serve the public interest or a charitable purpose and are operated by organizations that are exempt from taxation under section 501(c)(3) of the internal revenue code. Work performed by prisoners pursuant to this subdivision shall not result in a competitive disadvantage to a for profit enterprise.

(4) Prisoners made available for work under subsection (3)(c) shall not be assigned to work on projects in a manner that results in the displacement of employed persons in the community or the replacement of workers on strike or locked out of work. If a collective bargaining agreement is in effect at a place of employment that is the site of a proposed work project under subsection (3)(c), that bargaining unit must agree to the assignment of prisoners at the place of employment before the assignment is made.

(5) The warden at a correctional facility that makes prisoners available for work under subsection (3)(c) shall appoint a 7-member citizens advisory committee for the purpose of obtaining public input on proposals for assigning prisoners to work on those projects. The committee shall include broad representation from the community in which the proposed work project is to be located, including representatives of business, community service, and religious organizations and the president of the local AFL-CIO central labor council, or his or her designee. Before prisoners are assigned to a proposed work project, the proposed assignment shall be reviewed by the citizens advisory committee.

(6) The department annually shall submit to the house and senate appropriations subcommittees on corrections a report on work projects in which prisoners are made available for work under subsection (3)(c), including, but not limited to, the number of work projects, the number of prisoners placed on each work project, the type of work performed, and any problems raised by an advisory committee with respect to the work project.

(7) The willful failure of a prisoner to report to or return from an assignment to paid employment in the community or on a public work project within the time prescribed, or to remain within the prescribed limits of such an assignment, shall be considered an escape from lawful custody as provided in section 193(3) of the Michigan penal code, Act No. 328 of the Public Acts of 1931, as amended, being section 750.193 of the Michigan Compiled Laws.

(8) Prisoners employed at paid employment in the community shall reimburse the department for food, clothing, and daily travel expenses to and from work for days worked.

(9) The wages of prisoners employed at paid employment in the community shall be collected by the work camp responsible for the prisoner's care.

(10) A work camp collecting wages of a prisoner pursuant to subsection (9) shall disperse wages collected in the following priority order:

(a) Reimbursement to the department pursuant to subsection (8).

(b) Support of the prisoner's dependents who are receiving public assistance up to the maximum of the public assistance benefit but not exceeding 50% of the prisoner's net earnings.

(c) For prisoners without dependents receiving public assistance, 50% of the prisoner's net earnings shall be placed, at the prisoner's option, in either the prisoner's personal noninstitutional savings account or in escrow by the department for use by the prisoner upon release.

(d) The balance, if any, to the prisoner's institutional account.

(11) An employer who employs a prisoner pursuant to this section for work to which Act No. 166 of the Public Acts of 1965, as amended, being sections 408.551 to 408.558 of the Michigan Compiled Laws, applies shall pay the prisoner the prevailing wage as provided in that act.

(12) An employer who employs a prisoner pursuant to this section for work that is not under Act No. 166 of the Public Acts of 1965, as amended, shall pay the prisoner not less than the wage the employer pays to other employees with similar skills and experience.

(13) The department shall promulgate rules pursuant to the Administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, as amended, being sections 24.201 to 24.328 of the Michigan Compiled Laws, to establish criteria by which the department shall determine eligibility for participation in the programs of paid employment in the community established by this section.

History: Add. 1981, Act 119, Imd. Eff. July 19, 1981;—Am. 1993, Act 34, Imd. Eff. May 3, 1993.

Popular name: Department of Corrections Act

791.265d Occurrences requiring entry in law enforcement information network; occurrences

Rendered Friday, January 22, 2010

Page 46

Michigan Compiled Laws Complete Through PA 242 of 2009

requiring certain information to be made available on line; time limitation; scope of entry; “state correctional facility” defined.

Sec. 65d. (1) If 1 or more of the following occur, the department shall make an entry in the law enforcement information network:

(a) A prisoner escapes from a state correctional facility.

(b) A parole violation warrant is issued.

(2) If 1 or more of the following occur, the department shall make available on line to the law enforcement information network, by way of the corrections management information system, the following information:

(a) A prisoner is transferred into a community residential program.

(b) A prisoner is transferred into a minimum custody correctional facility of any kind, including a correctional camp or work camp.

(c) A person's parole status changes.

(3) An entry under subsection (1), or information under subsection (2), shall be entered or made available not later than 24 hours after the event occurs, and shall include the prisoner's name and former name, if any, physical descriptors, the remaining term of his or her sentence, and any other information determined relevant by the department.

(4) As used in this section, “state correctional facility” means a facility or institution which houses a prisoner population under the jurisdiction of the department.

History: Add. 1988, Act 401, Eff. Sept. 24, 1989;—Am. 1996, Act 104, Eff. Apr. 1, 1996.

Popular name: Department of Corrections Act

791.265e Transfer of prisoner to community placement facility; notice.

Sec. 65e. When a prisoner is transferred into a community placement facility of any kind, including a community corrections center, halfway house, or resident home, the department shall send notice of the transfer from the corrections management information system via the law enforcement information network to the sheriff and the Michigan state police post having jurisdiction over the county where the prisoner was originally sentenced, and to the local police department, the county sheriff and the Michigan state police post having jurisdiction over the community placement facility in which the prisoner is placed. The notice required under this section shall include the prisoner's name, the name of the community placement facility, crimes for which the prisoner is serving a sentence, and any other information determined relevant by the department.

History: Add. 1988, Act 392, Eff. Sept. 19, 1989.

Popular name: Department of Corrections Act

791.265f Housing prisoners; prohibitions.

Sec. 65f. (1) Beginning September 30, 1990, a prisoner who is serving a sentence for conviction of an assaultive crime shall not be placed in a privately owned, noncommercial residential dwelling used for housing prisoners.

(2) Beginning on the effective date of this section, for the purpose of housing prisoners, the department shall not open a facility in, or enter into a new contract for, a dwelling originally constructed and intended to be used to house 1 family.

History: Add. 1990, Act 160, Imd. Eff. July 2, 1990.

Popular name: Department of Corrections Act

791.265g Definitions.

Sec. 65g. As used in this section and sections 65h and 65i:

(a) “Community corrections center” means that term as defined in section 65a.

(b) “Community residential home” means that term as defined in section 65a.

(c) “Community status criteria” means the criteria for determining which prisoners are eligible to be placed in community corrections facilities as prescribed in section 65(g)(1).

(d) “Council” means a citizens' council formed under section 65i(1).

(e) “Prisoner” means a person who is under the jurisdiction of the department and has not been released on parole or discharged.

(f) “State correctional facility” means that term as defined in section 65a.

History: Add. 1990, Act 353, Imd. Eff. Dec. 26, 1990.

Compiler's note: In subdivision (c), the reference to “section 65(g)(1)” evidently should be “section 65h(1).”

Popular name: Department of Corrections Act

791.265h Placement in community corrections center or community residential home;

Rendered Friday, January 22, 2010

Page 47

Michigan Compiled Laws Complete Through PA 242 of 2009

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community status criteria; location of center; prisoner population; curfew; random checks.

Sec. 65h. (1) A prisoner who does not meet the community status criteria shall not be placed in a community corrections center or community residential home. The community status criteria include all of the following requirements:

(a) The prisoner has been given a level I security classification by the department's bureau of correctional facilities, on a scale of 6 levels in which level I is the least restrictive level.

(b) The prisoner is not serving a sentence for conviction of a crime of escape under section 193 of the Michigan penal code, Act No. 328 of the Public Acts of 1931, being section 750.193 of the Michigan Compiled Laws.

(c) The prisoner is not serving a sentence for conviction of a criminal sexual conduct offense listed in section 2a(1) of chapter IX of the code of criminal procedure, Act No. 175 of the Public Acts of 1927, being section 769.2a of the Michigan Compiled Laws.

(d) The prisoner is not classified as a very high assault risk according to the department's risk screening criteria.

(e) The prisoner does not have any pending felony charges against him or her, and is not subject to a detainer request from another jurisdiction by which the prisoner, upon his or her release, would be returned to that other jurisdiction to begin serving another felony sentence.

(f) The prisoner has not been given a special designation by the department which would prevent his or her placement.

(g) If the prisoner is serving a sentence for conviction of a crime of violence or an assaultive crime, as defined by rules of the department, the prisoner has less than 180 days remaining on his or her minimum sentence, and otherwise meets the community placement requirements of section 65a.

(h) If the prisoner is not subject to the 180-day rule described in subdivision (g), the prisoner is being placed no earlier in that prisoner's sentence than is allowed by the administrative rules of the department.

(2) Except as provided in subsections (3) and (4), a prisoner who is placed in a community corrections center shall be placed in a center that is located in 1 of the following:

(a) The county of the prisoner's most recent residence as listed on the prisoner's presentence report.

(b) A county in which the prisoner's spouse, parent, grandparent, brother, sister, or child resides.

(3) Subsection (2) does not prohibit the department from operating a community corrections center that serves more than 1 county. Any prisoner placed in such a center shall meet the conditions of subsection (2)(a) or (b) of the counties the center serves.

(4) Notwithstanding subsection (2), not more than 10% of the prisoner population of any community corrections center, at any 1 time, may consist of prisoners who would not be placed in that community corrections center according to the provisions of subsection (2).

(5) The department shall establish a curfew for every prisoner placed in a community corrections center.

(6) Random checks shall be conducted for all prisoners who are allowed off the premises of the community corrections center for purposes of employment, seeking employment, attending school, receiving treatment, or for any other approved reason. The random checks shall be for the purpose of verifying that each prisoner allowed off the premises is participating as scheduled in the function for which he or she is allowed off the premises.

History: Add. 1990, Act 353, Imd. Eff. Dec. 26, 1990.

Popular name: Department of Corrections Act

791.265i Citizens' council.

Sec. 65i. (1) The legislative body of a city, village, or township in which a community corrections center is located may form a 5-member citizens' council by sending written notice of its intention to form a citizens' council to the board of commissioners of the county in which the city, village, or township is located.

(2) Within 30 days after receiving the notice, the county board of commissioners or, in a county that has a county executive, the county executive subject to the concurrence of the county board of commissioners, shall appoint 5 members to the council. Three of the members shall be residents of the city, village, or township in which the community corrections center is located. The remaining 2 members need not be residents of that city, village, or township, but shall be residents of the county. Each member shall serve at the pleasure of the county board of commissioners or county executive that appointed that member.

(3) A citizens' council shall select a chairperson from among its members and other officers necessary for conducting the council's business. A citizens' council shall meet at a place and time determined by the chairperson.

(4) The supervisor of a community corrections center, at the request of the chairperson of the citizens' council in whose jurisdiction that community corrections center is located, shall meet with the council and, if

requested by the chairperson, shall provide to the council any of the following information for that community corrections center for the reporting period agreed to by the chairperson and the center supervisor:

(a) The number of prisoners placed in the community corrections center and the number of prisoners returned from the community corrections center to a state correctional facility.

(b) The institutional number, record of convictions, and term of sentence of each prisoner placed in the center, and a summary of the disciplinary problems or major misconduct citations, if any, for each of those prisoners while in the center; and written documentation verifying that the prisoners in the community corrections center were in compliance with the community status criteria on the date of their placement into the community corrections center. The written information provided under this subsection, and all copies of that information, may be distributed to the committee only for the duration of the meeting, and after the meeting shall be retained by the supervisor of the community corrections center or his or her designee.

(c) The number of prisoners in the center who, while in the center, tested positive for the presence of alcohol or controlled substances, resulting in a major misconduct violation.

(d) The number of prisoners who were apprehended and charged with the commission of a new criminal offense while in the center, or after they had escaped from the center and before they had been recaptured.

(e) The number of incidents resulting in a major misconduct violation in which a prisoner placed in the center was absent from the center without authorization, or failed to report to employment, school, treatment, or other destination as to which the prisoner's absence from the center was authorized.

(f) The number of prisoners in the center who are in treatment programs, and a summary of the services offered by those programs.

(g) The number of prisoners in the center who are employed, and the number who are in education programs.

(h) The number of personnel employed at the center and their job classifications, and the number and job classification of any personnel positions at the center that are not filled at the time of the report.

(5) A center supervisor shall not be required to meet with a citizens' council more often than once each month. If the center supervisor is unavailable at the time of a meeting called pursuant to subsection (4), the regional supervisor may appoint a designee to act on the center supervisor's behalf. If a community corrections center does not have a center supervisor, the duties of the center supervisor under this section shall be performed by a regional supervisor, field agent, or other person designated by the department as being generally responsible for overseeing the daily operation of that community corrections center.

(6) If a citizens' council believes that the placement of a prisoner into a community corrections center within its jurisdiction was made in violation of the community status criteria, the council shall give written or verbal notice to the center supervisor. If the center supervisor believes that the council was incorrect in its determination, the center supervisor or his or her designee shall meet with the council or chairperson of the council within 2 business days after receiving the notice, and shall review the prisoner's record and the community placement criteria and shall determine whether or not the placement violates the community placement criteria. If it is determined by the center supervisor that the placement does violate the community placement criteria, the department shall reclassify the prisoner to be returned to a state correctional facility.

(7) Each citizens' council may report annually to the county board of commissioners for that county or, in a county that has a county executive, to the county executive, and the state representatives and state senators for that district. The report shall describe the effect on the city, village, or township and the surrounding communities of the community corrections centers in the council's jurisdiction, and shall include a summary of information provided to the council under subsection (4).

(8) A citizens' council also shall do all of the following:

(a) Act as a liaison between the residents of the area affected by the community corrections center or centers in its jurisdiction and the department as to issues concerning the center or centers.

(b) Review policies and procedures governing the operation of the center or centers in its jurisdiction, including placement and supervision standards.

History: Add. 1990, Act 353, Imd. Eff. Dec. 26, 1990.

Popular name: Department of Corrections Act

791.266 Commitment by courts; purpose of classification.

Sec. 66. For the purpose of classification, all convicted prisoners shall be committed by courts of criminal jurisdiction of the state, to the commission, at a place to be designated by the commission.

History: 1953, Act 232, Eff. Oct. 2, 1953.

Popular name: Department of Corrections Act

791.267 Temporary confinement; study of prisoner; suitability of prisoner to type of

rehabilitation required; report; execution of confinement order; test for HIV or antibody to HIV; applicability of subsection (2); housing prisoner in administrative segregation, inpatient health care unit, or unit separate from general prisoner population; reporting positive test result; exposure of employee to blood or body fluid of prisoner; testing employee; employee equipment; HIV positive prisoner not to work in health facility; seroprevalence study; disclosure of test results; counseling; AIDS education program; report; definitions.

Sec. 67. (1) Quarters for temporary confinement apart from those of regular inmates shall be provided for convicted prisoners upon commitment at each of the state correctional facilities, which the director shall designate as a reception center. Within 60 days after the arrival of a convicted prisoner at such a state correctional facility, the classification committee shall make and complete a comprehensive study of the prisoner, including physical and psychiatric examinations, to ensure that the prisoner is confined in the state correctional facility suited to the type of rehabilitation required in his or her case. The warden of the state correctional facility shall deliver a report of the study of the classification committee to the deputy director of the correctional facilities administration, who shall, within 5 days after receipt of the report, execute an order to confine the prisoner in the state correctional facility determined as suitable by the deputy director.

(2) Immediately upon arrival at a reception center designated pursuant to subsection (1), each incoming prisoner shall undergo a test for HIV or an antibody to HIV. This subsection does not apply if an incoming prisoner has been tested for HIV or an antibody to HIV under section 5129 of the public health code, Act No. 368 of the Public Acts of 1978, being section 333.5129 of the Michigan Compiled Laws, within the 3 months immediately preceding the date of the prisoner's arrival at the reception center, as indicated by the record transferred to the department by the court under that section.

(3) If a prisoner receives a positive test result and is subsequently subject to discipline by the department for sexual misconduct that could transmit HIV, illegal intravenous use of controlled substances, or assaultive or predatory behavior that could transmit HIV, the department shall house that prisoner in administrative segregation, an inpatient health care unit, or a unit separate from the general prisoner population, as determined by the department.

(4) The department shall report each positive test result to the department of community health, in compliance with section 5114 of Act No. 368 of the Public Acts of 1978, being section 333.5114 of the Michigan Compiled Laws.

(5) If an employee of the department sustains a percutaneous, mucous membrane, or open wound exposure to the blood or body fluid of a prisoner, the employee may, and the department shall, proceed under section 67b.

(6) Upon the request of an employee of the department, the department shall provide or arrange for a test for HIV or an antibody to HIV for that employee, free of charge.

(7) Upon the request of an employee of the department, the department shall provide to that employee the equipment necessary to implement universal precautions to prevent transmission of HIV infection.

(8) A prisoner who receives a positive HIV test result under subsection (5) shall not work in a health facility operated by the department.

(9) The department shall conduct a seroprevalence study of the prisoners in all state correctional facilities to determine the percentage of prisoners who are HIV infected.

(10) The results of a test for HIV or an antibody to HIV conducted under this section shall be disclosed by the department pursuant to section 67b.

(11) The deputy director of the correctional facilities administration shall take steps to ensure that all prisoners who receive HIV testing receive counseling regarding AIDS including, at a minimum, treatment, transmission, and protective measures.

(12) The department, in conjunction with the department of community health, shall develop and implement a comprehensive AIDS education program designed specifically for correctional environments. The program shall be conducted by the bureau within the department responsible for health care, for staff and for prisoners at each state correctional facility.

(13) By March 30, 1991, the department shall submit a report regarding the testing component, managerial aspects, and effectiveness of subsections (2) to (12) to the senate and house committees with jurisdiction over matters pertaining to corrections, and to the senate and house committees with jurisdiction over matters pertaining to public health.

(14) As used in this section:

(a) "AIDS" means acquired immunodeficiency syndrome.

(b) "HIV" means human immunodeficiency virus.

(c) "Positive test result" means a double positive enzyme-linked immunosorbent assay test, combined with a positive western blot assay test, or a positive test under an HIV test that is considered reliable by the federal centers for disease control and is approved by the department of community health.

History: 1953, Act 232, Eff. Oct. 2, 1953;—Am. 1960, Act 103, Imd. Eff. Apr. 26, 1960;—Am. 1988, Act 510, Eff. Mar. 30, 1989;—Am. 1996, Act 565, Imd. Eff. Jan. 16, 1997.

Popular name: Department of Corrections Act

791.267a Nonemergency medical, dental, or optometric services; intentional injury; copayment or payment by prisoner; on-site medical treatment; report on feasibility and cost.

Sec. 67a. (1) A prisoner who receives nonemergency medical, dental, or optometric services at his or her request is responsible for a copayment fee to the department for those services, as determined by the department. If the prisoner is a minor, the prisoner's parent or guardian is also responsible for a copayment fee imposed under this section.

(2) A prisoner who intentionally injures himself or herself, and receives emergency medical care for that injury, is responsible for the entire cost of the medical care, rather than the copayment described in subsection (1).

(3) The department shall determine whether those prisoners who injure themselves intentionally shall be housed in a facility designed to allow on-site medical treatment of those injuries. Not later than 6 months after the effective date of this section, the director of the department shall report to the legislature on the feasibility and cost of implementing this subsection.

History: Add. 1996, Act 234, Eff. Mar. 31, 1997.

Popular name: Department of Corrections Act

791.267b Exposure of employee to blood or body fluid of prisoner; request to test prisoner for HIV or HBV infection; form and contents of request; determination; prisoner consent not required; counseling; determination not requiring HIV or HBV infection testing; notice of HIV or HBV test results; confidentiality; forms; violation of subsection (8) as misdemeanor; report; definitions.

Sec. 67b. (1) If an employee of the department sustains a percutaneous, mucous membrane, or open wound exposure to the blood or body fluids of a prisoner, the employee may request that the prisoner be tested for HIV infection or HBV infection, or both, pursuant to this section.

(2) An employee shall make a request described in subsection (1) to the department in writing on a form provided by the department within 72 hours after the exposure occurs. The request form shall be dated and shall contain at a minimum the name and address of the employee making the request and a description of his or her exposure to the blood or other body fluids of the prisoner. The request form shall contain a space for the information required under subsection (6) and a statement that the requester is subject to the confidentiality requirements of subsection (8) and section 5131 of the public health code, Act No. 368 of the Public Acts of 1978, being section 333.5131 of the Michigan Compiled Laws. The request form shall not contain information that would identify the prisoner.

(3) Upon receipt of a request under this section, the department shall make a determination as to whether or not there is reasonable cause to believe that the exposure described in the request occurred and if it was a percutaneous, mucous membrane, or open wound exposure pursuant to R 325.70001 to R 325.70018 of the Michigan administrative code. If the department determines that there is reasonable cause to believe that the exposure described in the request occurred and was a percutaneous, mucous membrane, or open wound exposure, the department shall test the prisoner for HIV infection or HBV infection, or both, as indicated in the request, subject to subsection (4).

(4) In order to protect the health, safety, and welfare of department employees, the department may test a prisoner under subsection (3) whether or not the prisoner consents to the test. The department is not required to give the prisoner an opportunity for a hearing or to obtain an order from a court of competent jurisdiction before administering the test.

(5) The department is not required to provide HIV counseling pursuant to section 5133(1) of Act No. 368 of the Public Acts of 1978, being section 333.5133 of the Michigan Compiled Laws, to an employee who requests that a prisoner be tested for HIV under this section, unless the department tests the employee for HIV.

(6) The department shall comply with this subsection if the department receives a request under this section and determines either that there is not reasonable cause to believe the requester's description of his or

her exposure or that the exposure was not a percutaneous, mucous membrane, or open wound exposure and as a result of the determination the department is not required to test the prisoner for HIV infection or HBV infection, or both. The department shall state in writing on the request form the reason it determined there was not reasonable cause to believe the requester's description of his or her exposure or for the department's determination that the exposure was not a percutaneous, mucous membrane, or open wound exposure, as applicable. The department shall transmit a copy of the completed request form to the requesting individual within 2 days after the date the department makes the determination described in this subsection.

(7) The department shall notify the requesting employee of the HIV or HBV test results, or both, whether positive or negative, within 2 days after the test results are obtained by the department. The notification shall be transmitted directly to the requesting employee or, upon request of the requesting employee, to his or her primary care physician or other health professional designated by the employee. The notice required under this subsection shall include an explanation of the confidentiality requirements of subsection (8).

(8) The notice required under subsection (7) shall not contain information that would identify the prisoner who tested positive or negative for HIV or HBV. The information contained in the notice is confidential and is subject to this section, the rules promulgated under section 5111(2) of Act No. 368 of the Public Acts of 1978, being section 333.5111 of the Michigan Compiled Laws, and section 5131 of Act No. 368 of the Public Acts of 1978, being section 333.5131 of the Michigan Compiled Laws. A person who receives confidential information under this section shall disclose the information to others only to the extent consistent with the authorized purpose for which the information was obtained.

(9) The department shall develop and distribute the forms required under this section.

(10) In addition to the penalties prescribed in the rules promulgated under section 5111(2) of Act No. 368 of the Public Acts of 1978 and in section 5131 of Act No. 368 of the Public Acts of 1978, a person who discloses information in violation of subsection (8) is guilty of a misdemeanor.

(11) The department shall report to the department of community health each test result obtained under this section that indicates that an individual is HIV infected, in compliance with section 5114 of Act No. 368 of the Public Acts of 1978, being section 333.5114 of the Michigan Compiled Laws.

(12) As used in this section:

(a) "Employee" means an individual who is employed by or under contract to the department of corrections.

(b) "HBV" means hepatitis B virus.

(c) "HBV infected" or "HBV infection" means the status of an individual who is tested as HBsAg-positive.

(d) "HIV" means human immunodeficiency virus.

(e) "HIV infected" means that term as defined in section 5101 of Act No. 368 of the Public Acts of 1978, being section 333.5101 of the Michigan Compiled Laws.

History: Add. 1996, Act 565, Imd. Eff. Jan. 16, 1997.

Popular name: Department of Corrections Act

791.268 Payment of filing fees or costs by prisoner; court order to make monthly payments; removal of amount from prisoner institutional account.

Sec. 68. If a prisoner is ordered by a court to make monthly payments for the purpose of paying the balance of filing fees or costs under section 2963 of the revised judiciary act of 1961, Act No. 236 of the Public Acts of 1961, being section 600.2963 of the Michigan Compiled Laws, the department shall remove those amounts from the institutional account of the prisoner subject to the order and, when an amount equal to the balance of the filing fees or costs due is removed, remit that amount as directed in the order.

History: Add. 1996, Act 556, Eff. Mar. 31, 1997.

Compiler's note: Former MCL 791.268, which pertained to mental evaluation as condition to release of certain prisoners, was repealed by Act 258 of 1974, Eff. Aug. 6, 1975.

Popular name: Department of Corrections Act

791.268a Visits from minors; conditions; restrictions; "minor" defined.

Sec. 68a. (1) Except as otherwise provided in subsection (2), a prisoner may be permitted to receive visits from a minor brother, sister, stepbrother, stepsister, half brother, or half sister if that minor is on the prisoner's approved visitor list.

(2) Notwithstanding subsection (1), the department may do any of the following:

(a) Place limits on visiting hours, establish reasonable rules of conduct, and establish uniform quotas at each institution for visits to prisoners to promote order and security in the institutions and to prevent interference with institutional routine or disruption of a prisoner's programming.

(b) Establish requirements for who must accompany the minor on the visit.

(c) Deny, restrict, or terminate visits as determined necessary by the department for the order and security of the institution.

(3) As used in this section, “minor” means a person who is less than 18 years of age.

History: Add. 2001, Act 8, Imd. Eff. May 25, 2001.

Popular name: Department of Corrections Act

791.269 Repealed. 1995, Act 18, Imd. Eff. Apr. 12, 1995.

Compiler's note: The repealed section pertained to cell occupancy requirements for new housing or facilities.

Popular name: Department of Corrections Act

791.269a Subjecting visitor to pat down search; condition; waiver; definitions.

Sec. 69a. (1) A visitor to a state correctional facility shall not be subjected to a pat down search unless every person performing or assisting in performing the pat down search is of the same sex as the person being searched. If the necessary personnel are not readily available, a visitor at his or her option may sign a waiver provided by the department of corrections, waiving the provisions of this subsection.

(2) As used in this section:

(a) “Pat down search” means a search of a person in which the person conducting the search touches the body or clothing, or both, of the person being searched to detect the presence of concealed objects.

(b) “State correctional facility” includes a youth correctional facility operated under section 20g by the department or a private vendor.

History: Add. 1990, Act 42, Imd. Eff. Mar. 29, 1990;—Am. 1998, Act 512, Imd. Eff. Jan. 8, 1999.

Popular name: Department of Corrections Act

CHAPTER V BUREAU OF PRISON INDUSTRIES.

791.270 Monitoring of telephone communications; conditions; disclosure of obtained information; evidence in criminal prosecution; definitions.

Sec. 70. (1) A correctional facility may monitor telephone communications over telephones available for use by prisoners in the correctional facility if all of the following conditions are met:

(a) The director promulgates rules under which the monitoring is to be conducted, and the monitoring is conducted in accordance with those rules. The rules shall include provisions for minimizing the intrusiveness of the monitoring and shall prescribe a procedure by which a prisoner may make telephone calls to his or her attorney, and any federal, state, or local public official if requested by that public official, that are not monitored.

(b) The monitoring is routinely conducted for the purpose of preserving the security and orderly management of the correctional facility, interdicting drugs and other contraband, and protecting the public, and is performed by employees of the department or, in the case of a youth correctional facility operated by a private vendor under section 20g, is conducted by employees of the private vendor.

(c) Notices are prominently posted on or near each telephone subject to monitoring informing users of the telephone that communications over the telephone may be monitored.

(d) In addition to the posting of notices under subdivision (c), the prisoners in the correctional facility are given reasonable notice of the rules promulgated under subdivision (a).

(e) Each party to the conversation is notified by voice that the conversation is being monitored.

(2) A correctional facility shall disclose information obtained pursuant to this section regarding a crime or attempted crime to any law enforcement agency having jurisdiction over that crime or attempted crime.

(3) Evidence obtained pursuant to this section regarding a crime or attempted crime may be considered as evidence in a criminal prosecution for that crime or attempted crime.

(4) As used in this section:

(a) “Correctional facility” includes a youth correctional facility operated under section 20g by the department or a private vendor.

(b) “Monitor” means to listen to or record, or both.

History: Add. 1993, Act 255, Imd. Eff. Nov. 29, 1993;—Am. 1998, Act 512, Imd. Eff. Jan. 8, 1999.

Popular name: Department of Corrections Act

791.271 Bureau of prison industries; supervision of industrial plants.

Sec. 71. The assistant director of the bureau of prison industries is hereby vested with the control, management, coordination and supervision of the industrial plants connected with the several penal

institutions, and subject to the approval of the director shall appoint all bureau personnel as may be necessary.

History: 1953, Act 232, Eff. Oct. 2, 1953.

Popular name: Department of Corrections Act

CHAPTER VI MISCELLANEOUS.

791.281 Powers and duties transferred; department abolished; rules and regulations.

Sec. 81. The powers and duties vested by law in the state department of corrections created under the provisions of Act No. 4 of the Public Acts of the Second Extra Session of 1947, as amended, being sections 791.1 to 791.123, inclusive, of the Compiled Laws of 1948, are hereby transferred to and vested in the state department of corrections herein created. Immediately on the taking effect of this act the state department of corrections created under said Act No. 4 of the Public Acts of the Second Extra Session of 1947, as amended, shall be abolished, and the state department of corrections herein created shall be the successor to all the powers, duties and responsibilities thereof, and whenever reference is made in any law of the state to the department of corrections reference shall be deemed to be intended to be made to the state department of corrections herein created. Any hearing or other proceeding pending before the state department of corrections created under Act No. 4 of the Public Acts of the Second Extra Session of 1947, as amended, shall not be abated but shall be deemed to be transferred to the department created under the provisions of this act, and shall be conducted and determined thereby in accordance with the provisions of the law governing such hearing or proceeding. All records, files and other papers belonging to the state department of corrections created under Act No. 4 of the Public Acts of the Second Extra Session of 1947, as amended, shall be turned over to the state department of corrections created under this act and shall be continued as a part of the records and files thereof. All orders and rules and regulations shall continue in effect at the pleasure of the department created under the provisions of this act, acting within its lawful authority. All of the powers and duties vested in the state department of corrections created under Act No. 4 of the Public Acts of the Second Extra Session of 1947, as amended, shall be transferred to and vested in the department of corrections created under this act.

History: 1953, Act 232, Eff. Oct. 2, 1953.

Popular name: Department of Corrections Act

791.282 Transfers of appropriations.

Sec. 82. The provisions of any other law to the contrary notwithstanding, for the fiscal year ending June 30, 1954, the commission may, with the approval of the state administrative board, make such transfers of appropriations as are necessary to carry out the intent of this act.

History: 1953, Act 232, Eff. Oct. 2, 1953.

Popular name: Department of Corrections Act

791.283 Repeal.

Sec. 83. Act No. 4 of the Public Acts of the Second Extra Session of 1947, as amended, being sections 791.1 to 791.123, inclusive, of the Compiled Laws of 1948, is hereby repealed.

History: 1953, Act 232, Eff. Oct. 2, 1953.

Popular name: Department of Corrections Act

791.285 Lifetime electronic monitoring program; establishment; implementation; manner of wearing or carrying; reimbursement; definition.

Sec. 85. (1) The lifetime electronic monitoring program is established in the department. The lifetime electronic monitoring program shall implement a system of monitoring individuals released from parole, prison, or both parole and prison who are sentenced by the court to lifetime electronic monitoring. The lifetime electronic monitoring program shall accomplish all of the following:

(a) By electronic means, track the movement and location of each individual from the time the individual is released on parole or from prison until the time of the individual's death.

(b) Develop methods by which the individual's movement and location may be determined, both in real time and recorded time, and recorded information retrieved upon request by the court or a law enforcement agency.

(2) An individual who is sentenced to lifetime electronic monitoring shall wear or otherwise carry an electronic monitoring device as determined by the department under the lifetime electronic monitoring program in the manner prescribed by that program and shall reimburse the department or its agent for the

actual cost of electronically monitoring the individual.

(3) As used in this section, "electronic monitoring" means a device by which, through global positioning system satellite or other means, an individual's movement and location are tracked and recorded.

History: Add. 2006, Act 172, Eff. Aug. 28, 2006.

Popular name: Department of Corrections Act

EXECUTIVE REORGANIZATION ORDER E.R.O. No. 1982-4

791.301 Rescinded. 1982, E.R.O. No. 1982-5, Eff. Oct. 15, 1982.

Compiler's note: The rescinded section, pertaining to transfer of interview function from parole board to corrections commission, was promulgated August 20, 1982, as Executive Order No. 1982-9, to become effective October 19, 1982. Executive Reorganization Order No. 1982-5, which was promulgated on October 15, 1982, as Executive Order No. 1982-14, rescinded Executive Order 1982-9 (E.R.O. No. 1982-4).

EXECUTIVE REORGANIZATION ORDER
E.R.O. No. 1991-12

791.302 Transfer of department of corrections to new department of corrections; transfer of powers and duties of Michigan corrections commission to new department of corrections.

WHEREAS, Article V, Section 1, of the Constitution of the State of Michigan of 1963 vests the executive power in the Governor; and

WHEREAS, Article V, Section 2, of the Constitution of the State of Michigan of 1963 empowers the Governor to make changes in the organization of the Executive Branch or in the assignment of functions among its units which he considers necessary for efficient administration; and

WHEREAS, Article V, Section 8, of the Constitution of the State of Michigan of 1963 provides that each principal department shall be under the supervision of the Governor, unless otherwise provided by the Constitution; and

WHEREAS, the Department of Corrections was created by Act No. 232 of the Public Acts of 1953, as amended, being Section 791.201 et seq. of the Michigan Compiled Laws; and

WHEREAS, the Michigan Corrections Commission was created by, and given certain functions, duties, and responsibilities in Act No. 232 of the Public Acts of 1953, as amended, being Section 791.201 et seq. of the Michigan Compiled Laws; and

WHEREAS, the functions, duties, and responsibilities assigned to the Michigan Corrections Commission can be more effectively carried out by the Director of Corrections and the Governor; and

WHEREAS, it is necessary in the interests of efficient administration and effectiveness of government to effect changes in the organization of the Executive Branch of government.

NOW, THEREFORE, I, John Engler, Governor of the State of Michigan, pursuant to the powers vested in me by Article V, Section 1, Article V, Section 2, and Article V, Section 8 of the Constitution of the State of Michigan of 1963 and the laws of the State of Michigan, do hereby order the following:

(1) The Department of Corrections, created under Section 1 of Act No. 232 of the Public Acts of 1953, as amended, being Section 791.201 of the Michigan Compiled Laws, is transferred by a Type I transfer, as defined by Section 3 of Act No. 380 of the Public Acts of 1965, being Section 16.103 of the Michigan Compiled Laws, to a new Michigan Department of Corrections.

(2) All the statutory authority, powers, duties, functions, and responsibilities of the Michigan Corrections Commission are hereby transferred to the Director of the new Michigan Department of Corrections, as head of the Michigan Department of Corrections, by a Type III transfer, as defined by Section 3 of Act No. 380 of the Public Acts of 1965, being Section 16.103 of the Michigan Compiled Laws, except the power to appoint the Director of Corrections contained in Section 3 of Act No. 232 of the Public Acts of 1953, being Section 791.203 of the Michigan Compiled Laws.

(3) Pursuant to Article V, Section 1, Article V, Section 2, and Article V, Section 8 of the Constitution of the State of Michigan of 1963, the power to appoint the Director of the new Michigan Department of Corrections is hereby vested in the Governor.

(4) The Director of the new Michigan Department of Corrections shall provide executive direction and supervision for the implementation of the transfer. The assigned functions, except the power to appoint the Director, shall be administered under the direction and supervision of the Director, and all prescribed functions of rule making, licensing, and registration, including the prescription of rules, regulations, standards, and adjudications, shall be transferred to the Director of the new Michigan Department of Corrections.

(5) All records, personnel, property, and unexpended balances of appropriations, allocations, and other funds used, held, employed, available, or to be made available to the Michigan Corrections Commission for the activities transferred to the new Michigan Department of Corrections by this Order are hereby transferred to the new Michigan Department of Corrections.

(6) The Director of the new Michigan Department of Corrections shall immediately develop a memorandum of record identifying any pending settlements, issues of compliance with applicable federal and State laws and regulations, or other obligations to be resolved by the Michigan Corrections Commission.

(7) All rules, orders, contracts, and agreements relating to the assigned functions lawfully adopted prior to the effective date of this Order shall continue to be effective until revised, amended, or repealed.

(8) Any suit, action, or other proceeding lawfully commenced by, against, or before any entity affected by this Order shall not abate by reason of the taking effect of this Order. Any suit, action, or other proceeding may be maintained by, against, or before the appropriate successor of any entity affected by this Order.

In fulfillment of the requirement of Article V, Section 2, of the Constitution of the State of Michigan of

1963, the provisions of this Executive Order shall become effective 60 days after the filing of this Executive Order.

History: 1991, E.R.O. No. 1991-12, Eff. Apr. 23, 1991.

EXECUTIVE REORGANIZATION ORDER
E.R.O. No. 1992-3

791.303 Abolition of bureau of field services and position of deputy director of bureau of field services; transfer of powers and duties to director of the Michigan department of corrections.

WHEREAS, Article V, Section 2, of the Constitution of the State of Michigan of 1963 empowers the Governor to make changes in the organization of the Executive Branch or in the assignment of functions among its units which he considers necessary for efficient administration; and

WHEREAS, the Bureau of Field Services and the position of deputy director in charge of field services was created by Section 31 of Act No. 232 of the Public Acts of 1953, as amended by Act No. 314 of the Public Acts of 1982, being Section 791.231 of the Michigan Compiled Laws, in the Michigan Department of Corrections; and

WHEREAS, the functions, duties and responsibilities assigned to the Bureau of Field Services, and the deputy director in charge of field services, can be more effectively organized and carried out under the supervision and direction of the head of the Michigan Department of Corrections; and

WHEREAS, it is necessary in the interest of efficient administration and effectiveness of government to effect changes in the organization of the Executive Branch of government.

NOW, THEREFORE, I, John Engler, Governor of the State of Michigan, pursuant to the powers vested in me by the Constitution of the State of Michigan of 1963 and the laws of the State of Michigan, do hereby order the following:

(1) All the statutory authority, powers, duties, functions and responsibilities, including the functions of budgeting, procurement and management-related functions, created under Section 31 of Act No. 232 of the Public Acts of 1953, as amended by Act No. 314 of the Public Acts of 1982, being Section 791.231 of the Michigan Compiled Laws, are hereby transferred from the Bureau of Field Services and the deputy director in charge of field services to the Director of the Michigan Department of Corrections by a Type III transfer, as defined by Section 3 of Act No. 380 of the Public Acts of 1965, as amended, being Section 16.103 of the Michigan Compiled Laws. The Bureau of Field Services and the position of deputy director in charge of field services are hereby abolished.

(2) The Director of the Michigan Department of Corrections shall provide executive direction and supervision for the implementation of the transfer. The transferred functions shall be administered under the direction and supervision of the Director of the Michigan Department of Corrections who may administer the transferred functions himself or may administer the transferred functions in other ways to promote efficient administration. All prescribed functions of rule making, licensing and registration, including the prescription of rules, regulations, standards and adjudications, shall be transferred to the Director of the Michigan Department of Corrections.

(3) All records, personnel, property and unexpended balances of appropriations, allocations and other funds used, held, employed, available or to be made available to the Bureau of Field Services or the deputy director in charge of field services, for the activities transferred to the Director of the Michigan Department of Corrections by this Order, are hereby transferred to the Michigan Department of Corrections.

(4) The Director of the Michigan Department of Corrections shall make internal organizational changes as may be administratively necessary to complete the realignment of responsibilities prescribed by this Order.

(5) The Director of the Michigan Department of Corrections shall immediately initiate coordination to facilitate the transfer and develop a memorandum of record identifying any pending settlements, issues of compliance with applicable federal and State laws and regulations, or other obligations to be resolved by the Bureau of Field Services or the deputy director in charge of field services.

(6) All rules, orders, contracts and agreements relating to the assigned functions lawfully adopted prior to the effective date of this Order shall continue to be effective until revised, amended or repealed.

(7) Any suit, action or other proceeding lawfully commenced by, against or before any entity affected by this Order shall not abate by reason of the taking effect of this Order. Any suit, action or other proceeding may be maintained by, against or before the appropriate successor of any entity affected by this Order.

In fulfillment of the requirement of Article V, Section 2, of the Constitution of the State of Michigan of 1963, the provisions of this Order shall become effective 60 days from the filing of this Order.

History: 1992, E.R.O. No. 1992-3, Eff. June 1, 1992.

EXECUTIVE REORGANIZATION ORDER
E.R.O. No. 2009-3

791.304 Establishment of Michigan parole and commutation board within department of corrections; transfer of powers and duties of parole board to Michigan parole and commutation board; abolishment of parole board.

WHEREAS, Section 1 of Article V of the Michigan Constitution of 1963 vests the executive power of the State of Michigan in the Governor;

WHEREAS, Section 2 of Article V of the Michigan Constitution of 1963 empowers the Governor to make changes in the organization of the executive branch of state government or in the assignment of functions among its units that the Governor considers necessary for efficient administration;

WHEREAS, there is a continuing need to reorganize functions amongst state departments to ensure efficient administration and effectiveness of government;

WHEREAS, expansion and reorganization of the Michigan Parole Board will lead to more effective implementation of corrections policy, greater administrative efficiencies in the Department of Corrections, enhanced accountability to elected officials, increased consideration of parole and commutation requests, and reductions in corrections expenditures;

NOW, THEREFORE, I, Jennifer M. Granholm, Governor of the State of Michigan, by virtue of the power and authority vested in the Governor by the Michigan Constitution of 1963 and Michigan law, order the following:

I. DEFINITIONS

As used in this Order:

A. "Civil Service Commission" means the Michigan Civil Service Commission created under Section 5 of Article XI of the Michigan Constitution of 1963.

B. "Department of Corrections" or "Department" means the principal department of state government created under Section 1 of the Corrections Code of 1953, 1953 PA 232, MCL 791.201, Section 275 of the Executive Organization Act of 1965, 1965 PA 380, MCL 16.375, and Executive Order 1991-12, MCL 791.302.

C. "Michigan Parole and Commutation Board" or "Board" means the Michigan Parole and Commutation Board established by this Order.

D. "Parole Board" means the Parole Board established in the Department of Corrections beginning on October 1, 1992, by Section 31a of the Corrections Code of 1953, 1953 PA 232, MCL 791.231a, and abolished by this Order.

E. "State Budget Director" means the individual appointed by the Governor pursuant to Section 321 of The Management and Budget Act, 1984 PA 431, MCL 18.1321.

II. CREATION OF MICHIGAN PAROLE AND COMMUTATION BOARD

A. The Michigan Parole and Commutation Board is established within the Department of Corrections. Except as provided in Section II.B or II.C, the Michigan Parole and Commutation Board shall consist of 15 members appointed by the Governor. Members of the Board shall not be within the classified state civil service. Not less than 6 members of the Board shall be individuals who, at the time of the member's original appointment, had not previously been employed or appointed to a position in the Department of Corrections other than a position as a member of the Board or the Parole Board.

B. Of the members of the Michigan Parole and Commutation Board initially appointed by the Governor under this Order, 4 members shall be appointed for a term expiring on November 30, 2009, 4 members shall be appointed for a term expiring on November 30, 2010, 4 members shall be appointed for a term expiring on November 30, 2011, and 3 members shall be appointed for a term expiring on November 30, 2012. After the initial appointments under this paragraph, members of the Board shall be appointed for a term of 4 years. After September 30, 2012 and before November 30, 2015, if the Board consists of more than 10 members, a vacancy on the Board occurring other than by expiration of a term shall not be filled and the Board shall consist of 1 less member for each vacancy not filled. Effective December 1, 2015, the Board shall consist of 10 members. For terms of office beginning on December 1, 2015, the Governor shall appoint only the number of Board members necessary to assure that the Board consists of 10 members.

C. Except as provided in Section II.B, a member of the Michigan Parole and Commutation Board shall continue to serve until a successor is appointed and qualified. Except as provided in Section II.B, a vacancy on the Board occurring other than by expiration of a term shall be filled by the Governor in the same manner as the original appointment for the balance of the unexpired term.

D. The Governor shall designate a member of the Michigan Parole and Commutation Board as the

Chairperson of the Board to serve as Chairperson at the pleasure of the Governor. The Chairperson of the Board shall be responsible for the administration and operation of the functions of the Board consistent with this Order. The Chairperson may conduct interviews, public hearings, and participate in the parole decision-making process. The Chairperson shall serve as the appointing authority for secretaries, assistants, clerks, and other employees of the Board as the Chairperson considers necessary, consistent with applicable rules and regulations of the Civil Service Commission.

E. Each member of the Michigan Parole and Commutation Board shall receive an annual salary as appropriated by law and shall be entitled to actual and necessary expenses while on the business of the Board consistent with standard state travel regulations.

F. A member of the Michigan Parole and Commutation Board shall be subject to removal by the Governor for incompetency, dereliction of duty, and as provided under Section 10 of Article V of the Michigan Constitution of 1963.

G. The Director of the Department of Corrections shall report to the Governor monthly on the productivity and caseload of the Michigan Parole and Commutation Board. Based upon these reports, the Director shall recommend to the Governor in writing any reduction or increase in the number of Board members necessary in the opinion of the Director.

III. ABOLITION OF PAROLE BOARD

A. All of the authority, powers, duties, functions, responsibilities, records, personnel, property, and unexpended balances of appropriations, allocations, or other funds of the Parole Board are transferred to the Michigan Parole and Commutation Board. The authority, powers, duties, and functions of the Parole Board transferred under this Order to the Michigan Parole and Commutation Board, include, but are not limited to, authority, powers, duties, and functions of the Parole Board under any of the following:

1. Section 9 of the Sex Offenders Registration Act, 1994 PA 295, MCL 28.729.
2. Section 36 of Title VIII of The Code of Criminal Procedure, 1927 PA 175, MCL 768.36.
3. Sections 1a, 1f, and 1g of Title IX of The Code of Criminal Procedure, 1927 PA 175, MCL 769.1a, 769.1f, and 769.1g.
4. Section 22 of the Uniform Criminal Extradition Act, 1937 PA 144, MCL 780.22.
5. Section 1 of 1957 PA 177, MCL 780.131.
6. Sections 16, 19, 21, and 48 of the William Van Regenmorter Crime Victim's Rights Act, 1985 PA 87, MCL 780.766, 780.769, 780.771, and 780.798.
7. The Corrections Code of 1953, 1953 PA 232, MCL 791.201 to 791.285.
8. Section 5 of the Special Alternative Incarceration Act, 1988 PA 287, MCL 798.15.
9. Sections 33 to 35 of 1893 PA 118, MCL 800.33 to 800.35.
10. Executive Order 2007-2.

B. After the effective date of this Order, any statutory and other references to the Parole Board shall be deemed references to the Michigan Parole and Commutation Board.

C. The Parole Board is abolished.

IV. IMPLEMENTATION OF TRANSFER

A. The Director of the Department of Corrections shall provide executive direction and supervision for the implementation of the transfer under this Order and shall make internal organization changes as necessary to effectuate the transfers.

B. The authority, powers, duties, functions, and responsibilities transferred to the Michigan Parole and Commutation Board under this Order shall be administered in such ways as to promote efficient administration.

C. All records, property, grants, and unexpended balances of appropriations, allocations, and other funds used, held, employed, available, or to be made available for the activities, powers, duties, functions, and responsibilities transferred to the Michigan Parole and Commutation Board under this Order are transferred to the Michigan Parole and Commutation Board.

V. MISCELLANEOUS

V. MISCELLANEOUS

A. The State Budget Director shall determine and authorize the most efficient manner possible for handling financial transactions and records in the state's financial management system necessary for the implementation of this Order.

B. All rules, orders, contracts, and agreements relating to the transfers under this Order lawfully adopted prior to the effective date of this Order shall continue to be effective until revised, amended, repealed, or rescinded.

C. This Order shall not abate any suit, action, or other proceeding lawfully commenced by, against, or

before any entity affected under this Order. Any suit, action, or other proceeding may be maintained by, against, or before the appropriate successor of any entity affected under this Order.

D. The invalidity of any portion of this Order shall not affect the validity of the remainder of the Order, which may be given effect without any invalid portion. Any portion of this Order found invalid by a court or other entity with proper jurisdiction shall be severable from the remaining portions of this Order.

In fulfillment of the requirements under Section 2 of Article V of the Michigan Constitution of 1963, the provisions of this Order are April 19, 2009 at 12:01 a.m.

History: 2009, E.R.O. No. 2009-3, Eff. Apr. 19, 2009;—Am. 2009, E.R.O. No. 2009-15, Eff. June 2, 2009.

Compiler's note: Section II.A., B., and C. of MCL 791.304, as enacted by E.R.O. No. 2009-3, was amended by E.R.O. No. 2009-15. The text of section II.A., B., and C. reflects these amendments; all other text remains as originally enacted.

COMMUNITY CORRECTIONS ACT

Act 511 of 1988

AN ACT to provide for the funding of community-based corrections programs through local governmental subdivisions or certain nonprofit agencies; to prescribe the powers and duties of certain state officers and agencies; to provide for community corrections advisory boards and prescribe their powers and duties; to create an office of community alternatives and a state community corrections board within the department of corrections and prescribe their powers and duties; and to provide for the promulgation of rules.

History: 1988, Act 511, Imd. Eff. Dec. 29, 1988.

The People of the State of Michigan enact:

791.401 Short title.

Sec. 1. This act shall be known and may be cited as the “community corrections act”.

History: 1988, Act 511, Imd. Eff. Dec. 29, 1988.

Popular name: Act 511

791.402 Definitions.

Sec. 2. As used in this act:

(a) “City advisory board” means a community corrections advisory board created by a city pursuant to sections 6 and 7.

(b) “City-county advisory board” means a community corrections advisory board created by a county and the largest city by population within that county pursuant to sections 6 and 7.

(c) “Community corrections program” means a program that is operated by or contracted for by a city, county, or group of counties, or is operated by a nonprofit service agency, and is an alternative to incarceration in a state correctional facility or jail.

(d) “County advisory board” means a community corrections advisory board created by a county pursuant to sections 6 and 7.

(e) “Department” means the department of corrections.

(f) “Nonprofit service agency” means a nonprofit organization that provides treatment, guidance, training, or other rehabilitative services to individuals, families, or groups in such areas as health, education, vocational training, special education, social services, psychological counseling, alcohol and drug treatment, community service work, victim restitution, and employment.

(g) “Office” means the office of community alternatives created in section 3.

(h) “Plan” means a comprehensive corrections plan submitted by a county, city, or regional advisory board pursuant to section 8.

(i) “Regional advisory board” means a community corrections advisory board created by a group of 2 or more counties pursuant to sections 6 and 7.

(j) “State board” means the state community corrections board created in section 3.

History: 1988, Act 511, Imd. Eff. Dec. 29, 1988.

Popular name: Act 511

791.403 Office of community alternatives; creation; office as autonomous entity; composition; appointment and duties of executive director; state community corrections board; creation; function; appointment, qualifications, and terms of members; vacancy; expenses; chairperson.

Sec. 3. (1) An office of community alternatives is created within the department. The office shall exercise its powers and duties including budgeting and management as an autonomous entity, independent of the director of the department. The office shall consist of the board and an executive director, and such staff as the executive director may appoint to carry out the duties of the office. The executive director shall be appointed by the board, and shall carry out the duties of the office subject to the policies established by the board.

(2) A state community corrections board is created in the office. The board shall act as the policy making body for the office, as provided in this act.

(3) Not later than 90 days after the effective date of this act, the governor shall appoint, and the senate shall confirm, the 13 members of the state board as follows:

(a) One member shall be a county sheriff.

(b) One member shall be a chief of a city police department.

- (c) One member shall be a judge of the circuit court or recorder's court.
 - (d) One member shall be a judge of the district court.
 - (e) One member shall be a county commissioner.
 - (f) One member shall be a member of city government.
 - (g) One member shall represent an existing community alternatives program.
 - (h) One member shall be the director of the department of corrections or his or her designee.
 - (i) One member shall be a county prosecutor.
 - (j) One member shall be a criminal defense attorney.
 - (k) Three members shall be representatives of the general public.
- (4) The governor shall ensure fair geographic representation of the state board membership and that minority persons and women are fairly represented.
- (5) Members of the state board shall serve for terms of 4 years each, except that of the members first appointed, 5 shall serve for terms of 4 years each, 4 shall serve for terms of 3 years each, and 4 shall serve for terms of 2 years each.
- (6) A vacancy on the state board shall be filled in the same manner as the original appointment.
- (7) Members of the state board shall serve without compensation, but shall be reimbursed by the department for actual and necessary expenses incurred in attending meetings.
- (8) The governor shall annually appoint a chairperson from among the members of the board.

History: 1988, Act 511, Imd. Eff. Dec. 29, 1988.

Popular name: Act 511

791.404 Duties of state board.

Sec. 4. The state board shall do all of the following:

- (a) Develop and establish goals, offender eligibility criteria, and program guidelines for community corrections programs.
- (b) Adopt minimum program standards, policies, and rules for community corrections programs.
- (c) Adopt an application process and procedures for funding community corrections programs, including the format for comprehensive corrections plans.
- (d) Adopt criteria for community corrections program evaluations.
- (e) Hire an executive director, who shall serve at the pleasure of the board.

History: 1988, Act 511, Imd. Eff. Dec. 29, 1988.

Popular name: Act 511

791.405 Duties of office.

Sec. 5. The office shall do all of the following:

- (a) Provide technical assistance and training to cities, counties, regions, or nonprofit service agencies in developing, implementing, evaluating, and operating community corrections programs.
- (b) Enter into agreements with city, county, city-county, or regional advisory boards or nonprofit service agencies for the operation of community corrections programs by those boards or agencies, and monitor compliance with those agreements.
- (c) Act as an information clearinghouse regarding community corrections programs for cities, counties, regions, or nonprofit service agencies that receive funding under this act.
- (d) Review and approve local plans and proposals pursuant to sections 8 and 10.
- (e) In instances of substantial noncompliance, halt funding to cities, counties, regions, or agencies, except that before halting funding, the office shall do both of the following:
 - (i) Notify the city, county, region, or agency of the allegations and allow 30 days for a response.
 - (ii) If an agreement is reached concerning a remedy, allow 30 days following that agreement for the remedy to be implemented.

History: 1988, Act 511, Imd. Eff. Dec. 29, 1988.

Popular name: Act 511

791.406 Application for funding and other assistance; county advisory board; regional advisory board; city-county advisory board; city advisory board.

Sec. 6. (1) A county may elect to apply for funding and other assistance under this act by a vote of the county board of commissioners approving the decision to apply, and by appointing a county advisory board. Two or more counties, by vote of the county board of commissioners of each county, may agree to create a regional advisory board instead of a county advisory board. A regional advisory board shall perform the same functions as a county advisory board for each county that participates in establishing the regional board.

(2) A county and the largest city by population within that county may elect to jointly apply for funding and other assistance under this act. An application for funding requires a vote of the board of commissioners approving the decision to apply and a majority resolution of the city council, and the appointment of a city-county advisory board.

(3) A city may elect to apply for funding and other assistance under this act by a majority resolution of the city council, and by appointing a city advisory board.

History: 1988, Act 511, Imd. Eff. Dec. 29, 1988.

Popular name: Act 511

791.407 Membership of boards.

Sec. 7. (1) A county advisory board, regional advisory board, city-county advisory board, or city advisory board shall consist of the following:

- (a) One member shall be a county sheriff, or his or her designee.
- (b) One member shall be a chief of a city police department, or his or her designee.
- (c) One member shall be a judge of the circuit court or his or her designee.
- (d) One member shall be a judge of the district court or his or her designee.
- (e) One member shall be a judge of the probate court or his or her designee.

(f) One member shall be a county commissioner or city councilperson. In the case of a regional advisory board or a city-county advisory board, 1 county commissioner or councilperson from each participating city and county shall serve as a member.

(g) One member shall be selected from 1 of the following service areas: mental health, public health, substance abuse, employment and training, or community alternative programs.

(h) One member shall be a county prosecuting attorney or his or her designee.

(i) One member shall be a criminal defense attorney.

(j) One member shall be from the business community.

(k) One member shall be from the communications media.

(l) One member shall be either a circuit court probation agent or a district court probation officer.

(m) One member shall be a representative of the general public.

(2) In the case of a county or regional advisory board, the members shall be appointed by the county board or boards of commissioners. In the case of a city advisory board, the members shall be appointed by the city council. In the case of the city-county advisory board, the members shall be appointed by the county board of commissioners and the city council. In appointing the members of an advisory board, the county and city shall ensure that minority persons and women are fairly represented.

(3) Before an appointment is made under this section, the appointing authority shall publish advance notice of the appointments and shall request that the names of persons interested in being considered for appointment be submitted to the appointing authority.

History: 1988, Act 511, Imd. Eff. Dec. 29, 1988.

Popular name: Act 511

791.408 Comprehensive corrections plan.

Sec. 8. (1) A county, city, city-county, or regional advisory board, on behalf of the city, county, or counties it represents, may apply for funding and other assistance under this act by submitting to the office a comprehensive corrections plan that meets the requirements of this section, and the criteria, standards, rules, and policies developed by the state board pursuant to section 4.

(2) The plan shall be developed by the county, city, city-county, or regional advisory board and shall include all of the following for the county, city, or counties represented by the advisory board:

(a) A system for the development, implementation, and operation of community corrections programs and an explanation of how the state prison commitment rate for the city, county, or counties will be reduced, and how the public safety will be maintained, as a result of implementation of the comprehensive corrections plan. The plan shall include, where appropriate, provisions that detail how the city, county, or counties plan to substantially reduce, within 1 year, the use of prison sentences for felons for which the state felony sentencing guidelines upper limit for the recommended minimum sentence is 12 months or less as validated by the department of corrections. Continued funding in the second and subsequent years shall be contingent upon substantial compliance with this subdivision.

(b) A data analysis of the local criminal justice system including a basic description of jail utilization detailing such areas as sentenced versus unsentenced inmates, sentenced felons versus sentenced misdemeanants, and any use of a jail classification system. The analysis also shall include a basic description of offenders sentenced to probation and to prison and a review of the rate of commitment to the state

corrections systems from the city, county, or counties for the preceding 3 years. The analysis also shall compare actual sentences with the sentences recommended by the state felony sentencing guidelines.

(c) An analysis of the local community corrections programs used at the time the plan is submitted and during the preceding 3 years, including types of offenders served and funding levels.

(d) A system for evaluating the effectiveness of the community corrections program, which shall utilize the criteria developed pursuant to section 4(d).

(e) The identity of any designated subgrant recipient.

(f) In the case of a regional or city-county plan, provisions for the appointment of 1 fiscal agent to coordinate the financial activities pertaining to the grant award.

(3) The county board or boards of commissioners of the county or counties represented by a county, city-county, or regional advisory board, or the city council of the city represented by a city or city-county advisory board, shall approve the proposed comprehensive corrections plan prepared by their advisory board before the plan is submitted to the office pursuant to subsection (1).

(4) This section is intended to encourage the participation in community corrections programs of offenders who would likely be sentenced to imprisonment in a state correctional facility or jail, would not increase the risk to public safety, have not demonstrated a pattern of violent behavior, and do not have a criminal record that indicates a pattern of violent offenses.

History: 1988, Act 511, Imd. Eff. Dec. 29, 1988.

Popular name: Act 511

791.409 Jurisdiction of sentencing court.

Sec. 9. A sentencing court that places a person in a community corrections program shall retain jurisdiction over the person as a probationer under chapter XI of the code of criminal procedure, Act No. 175 of the Public Acts of 1927, being sections 771.1 to 771.14a of the Michigan Compiled Laws.

History: 1988, Act 511, Imd. Eff. Dec. 29, 1988.

Popular name: Act 511

791.410 Nonprofit service agency; application for direct state funding; notice; appointment or creation of advisory board; contract with nonprofit service agency; limitation on direct funding.

Sec. 10. (1) In any jurisdiction that has not elected to apply for funding under this act and has not appointed an advisory board or participated in the creation of an advisory board, a nonprofit service agency that operates in that jurisdiction may apply for and receive direct state funding in that jurisdiction.

(2) The office promptly shall notify the county board of commissioners of a county described in subsection (1) of the fact that the nonprofit service agency has submitted an application for funding. The county shall have 30 days after receiving notice to apply for funding under this act, and to take steps to appoint a county advisory board or participate in the creation of a regional advisory board, in which case the application of the nonprofit service agency shall be denied.

(3) An advisory board may contract with a nonprofit service agency for the provision of services as described in the comprehensive corrections plan.

(4) A nonprofit service agency that receives direct funding under subsection (1) shall not receive the direct funding for a period of more than 24 consecutive months.

History: 1988, Act 511, Imd. Eff. Dec. 29, 1988.

Popular name: Act 511

791.411 Authorized payments for community corrections programs; funding for administration; current spending not to be supplanted.

Sec. 11. (1) The office shall authorize payments from funds appropriated to the office for community corrections programs to cities, counties, regions, or agencies for the community corrections programs described in the plan submitted pursuant to section 8 or the proposal submitted pursuant to section 10 if the plan or proposal is approved by the office.

(2) Of the total funding recommended for the implementation of the comprehensive corrections plan, not more than 30% may be used by the city, county, or counties for administration.

(3) The funds provided to a city, county, or counties under this section shall not supplant current spending by the city, county, or counties for community corrections programs.

History: 1988, Act 511, Imd. Eff. Dec. 29, 1988.

Popular name: Act 511

791.412 Annual report; biannual report.

Sec. 12. (1) The office shall submit an annual report not later than November 1 of each year, detailing the individual requests received by the state board for funding under this act, and the programs and plans approved for funding.

(2) The office shall submit a biannual report not later than March 1 and September 1 of each year, detailing the effectiveness of the programs and plans funded under this act, including an explanation of how the rate of commitment of prisoners to the state prison system has been affected by the programs and plans funded under this act and listing any instances of noncompliance as required under section 5(b).

(3) All of the reports required in this section shall be submitted to the department of management and budget, the department of corrections, the members of the senate standing committee on criminal justice, urban affairs and economic development, the members of the house standing committee on corrections, the members of the senate and house appropriations subcommittees on corrections, and the senate and house fiscal agencies.

History: 1988, Act 511, Imd. Eff. Dec. 29, 1988.

Popular name: Act 511

791.413 Transfer of records, property, personnel, and unexpended balances of appropriations and other resources.

Sec. 13. Not later than 180 days after the effective date of this act, any records, property, personnel, and unexpended balances of appropriations and other resources necessary to the operation of the office shall be transferred to the office by the department of corrections.

History: 1988, Act 511, Imd. Eff. Dec. 29, 1988.

Popular name: Act 511

791.414 Rules.

Sec. 14. The office, with the approval of the state board, shall promulgate rules pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws, necessary to implement this act.

History: 1988, Act 511, Imd. Eff. Dec. 29, 1988.

Popular name: Act 511

CORRECTIONAL OFFICERS' TRAINING ACT OF 1982
Act 415 of 1982

AN ACT to improve the training and education of state correctional officers; to provide for the certification of state correctional officers and the development of standards and requirements for state correctional officers; to provide for the creation of a correctional officers' training council and a central training academy; and to prescribe the powers and duties of certain state agencies.

History: 1982, Act 415, Eff. Mar. 30, 1983;—Am. 2003, Act 121, Eff. Oct. 1, 2003.

The People of the State of Michigan enact:

791.501 Short title.

Sec. 1. This act shall be known and may be cited as the “correctional officers' training act of 1982”.

History: 1982, Act 415, Eff. Mar. 30, 1983.

791.502 Definitions.

Sec. 2. As used in this act:

- (a) “Central training academy” means the central training academy established pursuant to section 15.
- (b) “Correctional facility” means a facility or institution which houses an inmate population under the jurisdiction of the department of corrections.
- (c) “Council” means the correctional officers' training council created under section 3.
- (d) “Department” means the state department of corrections.
- (e) “Executive secretary” means the executive secretary of the council.
- (f) “State correctional officer” means any person employed by the department in a correctional facility as a correctional officer or a corrections medical aide, or that person's immediate supervisor.

History: 1982, Act 415, Eff. Mar. 30, 1983;—Am. 2003, Act 121, Eff. Oct. 1, 2003.

791.503 Correctional officers' training council; creation; duties; membership.

Sec. 3. The correctional officer's training council is created within the department and shall establish standards regarding training and education as prescribed in this act. The council shall consist of 8 members appointed by the governor. The members shall be appointed as follows:

- (a) One member shall represent state corrections officers.
- (b) One member shall represent the department.
- (c) One member shall represent the department of management and budget.
- (d) One member shall represent the state personnel director.
- (e) Two members shall represent the public at large.
- (f) Two members shall represent the academic community, at least 1 of whom shall represent Michigan community colleges.

History: 1982, Act 415, Eff. Mar. 30, 1983;—Am. 2003, Act 121, Eff. Oct. 1, 2003.

791.504 Council members; terms; appointment; vacancy; reappointment.

Sec. 4. (1) All members of the council shall hold office for a term of 3 years. Successors shall be appointed in the same manner as the original appointment.

(2) A person appointed as a member to fill a vacancy created other than by expiration of a term shall be appointed in the same manner as the original appointment for the remainder of the unexpired term of the member whom the person is to succeed.

(3) Any member may be reappointed for additional terms.

History: 1982, Act 415, Eff. Mar. 30, 1983;—Am. 2003, Act 121, Eff. Oct. 1, 2003.

791.505 Council chairperson and vice-chairperson; designation; terms of office; reelection; location and number of council meetings; special meetings; establishment of procedures and requirements; conduct of business at public meeting; public notice; compensation; expenses.

Sec. 5. (1) The council shall designate from among its members a chairperson and a vice-chairperson who shall serve for 1-year terms and who may be reelected.

(2) The council shall meet at least 4 times in each year at Lansing. The council shall hold special meetings when called by the chairperson or, in the absence of the chairperson, by the vice-chairperson, or when called by the chairperson upon the written request of 4 members of the council. The council shall establish its own

procedures and requirements with respect to quorum, place, and conduct of its meeting and other matters.

(3) The business which the council may perform shall be conducted at a public meeting of the council held in compliance with the open meetings act, 1976 PA 267, MCL 15.261 to 15.275. Public notice of the time, date, and place of the meeting shall be given in the manner required by the open meetings act, 1976 PA 267, MCL 15.261 to 15.275.

(4) The members of the council shall serve without compensation but shall be entitled to their actual expenses in attending meetings and in the performance of their duties under this act.

History: 1982, Act 415, Eff. Mar. 30, 1983;—Am. 2003, Act 121, Eff. Oct. 1, 2003.

791.506 Council member not disqualified from holding public office or employment.

Sec. 6. A member of the council shall not be disqualified from holding any public office or employment by reason of his or her appointment or membership on the council, nor shall he or she forfeit any such office or employment, by reason of his or her appointment under this act, notwithstanding the provisions of any local or special act or any local law, ordinance, or charter.

History: 1982, Act 415, Eff. Mar. 30, 1983.

791.507 Executive secretary; appointment; functions and duties; compensation; expenses.

Sec. 7. There shall be an executive secretary of the council who shall be appointed by the council upon recommendations from the director of the department. The executive secretary shall be an employee of the department and shall perform such functions and duties as may be assigned by the council. The executive secretary shall receive compensation and reimbursement for expenses within the amounts appropriated under section 8.

History: 1982, Act 415, Eff. Mar. 30, 1983.

791.508 Administrative support services; separate appropriation.

Sec. 8. Administrative support services for the council and executive secretary shall be provided by the department as provided by separate appropriation for the council.

History: 1982, Act 415, Eff. Mar. 30, 1983.

791.509 Certification or recertification of state correctional officer.

Sec. 9. Beginning 6 months after the effective date of this act, a person shall not be a state correctional officer unless he or she is certified or recertified by the Michigan commission of corrections as provided in section 10, 11, or 12. The Michigan commission of corrections shall certify those persons and recertify on an annual basis those persons who satisfy the criteria set forth in sections 10 to 12.

History: 1982, Act 415, Eff. Mar. 30, 1983.

791.510 Automatic certification and annual recertification of state correctional officer; recertification requirements; approval of minimum standards and requirements for certification and recertification.

Sec. 10. (1) Beginning September 30, 1983, a person who is employed as a state correctional officer on March 30, 1983, shall automatically be certified and annually recertified by the commission of corrections until December 31, 1985. Beginning January 1, 1986, a person who is employed as a state correctional officer on March 30, 1983, shall not be recertified unless he or she has done both of the following:

(a) Completed successfully 320 hours of training with credit for training provided by the department allowed but limited to 160 hours of credit for training received prior to July 1, 1982.

(b) Fulfilled other minimum standards and requirements for recertification developed pursuant to section 13 by the council and approved by the commission of corrections.

(2) All minimum standards and requirements for recertification of persons under this section shall be subject to approval by the state civil service commission.

History: 1982, Act 415, Eff. Mar. 30, 1983;—Am. 1989, Act 4, Eff. June 14, 1989.

791.511 Certification or recertification of person employed as state correctional officer after March 30, 1983, but before January 1, 1985; requirements.

Sec. 11. (1) A person who is not employed as a state correctional officer on March 30, 1983, but who becomes employed as a state correctional officer before January 1, 1985, shall not be certified or recertified by the commission of corrections unless he or she has done both of the following:

(a) Obtained a high school diploma or attained a passing score on the general education development test indicating a high school graduation level.

(b) Fulfilled other minimum standards and requirements developed pursuant to section 13 by the council and approved by the commission of corrections for certification and subsequently for recertification.

(2) All minimum standards and requirements for certification and subsequently for recertification of persons under this section shall be subject to approval by the state civil service commission.

History: 1982, Act 415, Eff. Mar. 30, 1983;—Am. 1989, Act 4, Eff. June 14, 1989.

791.512 Certification or recertification of person employed as state correctional officer; requirements; certification or recertification of correctional officer or immediate supervisor thereof at former Detroit house of correction; conditions to automatic certification and recertification of department of mental health direct care employee, forensic security aide, or work camp supervisor; certification and recertification of forensic security aide at Huron valley center; approval of minimum standards and requirements for certification and recertification.

Sec. 12. (1) Except as provided in subsections (2), (3), and (4), a person who is not employed as a state correctional officer on March 30, 1983 and who is not employed as a state correctional officer until after December 31, 1984, shall not be certified or recertified by the Michigan commission of corrections unless he or she has done all of the following:

(a) Obtained a high school diploma or attained a passing score on the general education development test indicating a high school graduation level.

(b) Successfully completed all of the following:

(i) One of the following:

(A) A vocational certificate program as determined by the council, earned from an accredited postsecondary educational institution, which program shall require a minimum of 15 semester credit hours or 23 term credit hours.

(B) Equivalent course work to a vocational certificate program, as determined by the council, earned from an accredited postsecondary educational institution, which course work shall require a minimum of 15 semester credit hours or 23 term credit hours. The credit hours required under this subparagraph may have been earned at any time.

(C) A degree granted by an accredited postsecondary educational institution in a major discipline of study that is relevant to the position of state correctional officer, as determined by the council. A degree required under this subparagraph may have been earned at any time.

(ii) A minimum of 2 months of supervised, paid internship, as determined by the council, as an intern in a correctional facility.

(iii) A minimum of 320 hours of new employee training, as determined by the council, at the central training academy.

(c) Fulfilled other minimum standards and requirements developed pursuant to section 13 by the council and approved by the department for certification and subsequently for recertification.

(2) A person who was employed as a correctional officer or an immediate supervisor of a correctional officer at the former Detroit house of correction on December 31, 1984 shall automatically be certified and annually recertified by the department until December 31, 1985. Beginning January 1, 1986, a person who was employed as a correctional officer or an immediate supervisor of a correctional officer at the former Detroit house of correction on December 31, 1984 shall not be recertified unless he or she has done both of the following:

(a) Completed successfully a minimum of 160 hours of training provided by the department.

(b) Fulfilled other minimum standards and requirements for recertification developed pursuant to section 13 by the council and approved by the department.

(3) A department of mental health direct care employee of a state facility officially designated for closure or phase-down due to deinstitutionalization, or a forensic security aide II or III employed by the department of mental health center for forensic psychiatry, or a work camp supervisor employed by the department of corrections shall automatically be certified and annually recertified by the department for 3 years following the date he or she became employed as a state correctional officer, if he or she has done all of the following:

(a) Within 1 year of the date he or she became employed as a state correctional officer, obtained a high school diploma or attained a passing score on the general education development test indicating a high school graduation level.

(b) Within 1 year of the date he or she became employed as a state correctional officer, completed successfully 320 hours of new employee training with a credit up to 160 hours of previously acquired training, as approved by the council.

(c) Within 3 years of the date he or she became employed as a state correctional officer, completed 1 of the following:

(i) A vocational certificate program, as determined by the council, earned from an accredited postsecondary educational institution, which program shall require a minimum of 15 semester credit hours or 23 term credit hours.

(ii) Equivalent course work to a vocational certificate program, as determined by the council, earned from an accredited postsecondary educational institution, which course work shall require a minimum of 15 semester credit hours or 23 term credit hours. The credit hours required under this subparagraph may have been earned at any time.

(iii) A degree granted by an accredited postsecondary educational institution in a major discipline of study that is relevant to the position of state correctional officer, as determined by the council. A degree required under this subparagraph may have been earned at any time.

(d) Fulfilled other minimum standards and requirements developed pursuant to section 13 by the council and approved by the department for certification and subsequently for recertification.

(4) An employee of the department of community health who is employed as a forensic security aide at the Huron valley center of the department of community health or the center for forensic psychiatry of the department of community health, and who is transferred to a position as a state correctional officer employed by the department of corrections, shall be automatically certified and recertified by the department for 3 years after the date on which he or she became employed as a state correctional officer, if he or she meets all of the requirements established by law or by the department for employment as a state correctional officer and does all of the following:

(a) Within 30 days after the effective date of the 2004 amendatory act that amended this section, declares his or her intent to accept the transfer to a position as a state correctional officer.

(b) Within 1 year of the date he or she became employed as a state correctional officer, obtained a high school diploma or attained a passing score on the general education development test indicating a high school graduation level.

(c) Within 3 years of the date he or she became employed as a state correctional officer, completed 1 of the following:

(i) A vocational certificate program, as determined by the council, earned from an accredited postsecondary educational institution, which program shall require a minimum of 15 semester credit hours or 23 term credit hours.

(ii) Equivalent course work to a vocational certificate program, as determined by the council, earned from an accredited postsecondary educational institution, which course work shall require a minimum of 15 semester credit hours or 23 term credit hours. The credit hours required under this subparagraph may have been earned at any time.

(iii) A degree granted by an accredited postsecondary educational institution in a major discipline of study that is relevant to the position of state correctional officer, as determined by the council. A degree required under this subparagraph may have been earned at any time.

(d) Within 1 year of the date he or she became employed as a state correctional officer, completed successfully 320 hours of new employee training with a credit up to 160 hours of previously acquired training, as approved by the council.

(e) Fulfilled other minimum standards and requirements, except for physical fitness requirements, developed pursuant to section 13 by the council and approved by the department for certification and subsequently for recertification.

(5) All minimum standards and requirements for certification and subsequently for recertification of persons under subsections (1), (2), (3), and (4) are subject to approval by the state civil service commission.

History: 1982, Act 415, Eff. Mar. 30, 1983;—Am. 1985, Act 44, Imd. Eff. June 14, 1985;—Am. 1989, Act 4, Eff. June 14, 1989;—Am. 2004, Act 583, Imd. Eff. Jan. 4, 2005.

791.513 Minimum standards and requirements for state correctional officers; development; approval.

Sec. 13. (1) Not later than June 30, 1983, and as often as necessary after that, the council shall develop minimum standards and requirements for state correctional officers with respect to the following:

(a) Recruitment, selection, and certification of new state correctional officers based upon at least, but not limited to, work experience, educational achievement, and physical and mental fitness.

(b) New employee and continuing training programs.

(c) Recertification process.

(d) Course content of the vocational certificate program, required in section 12, the central training

academy, and continuing training programs.

(e) Decertification process.

(2) Standards and requirements developed by the council under this section shall be effective only if they are approved by the commission of corrections.

(3) Standards and requirements approved by the commission of corrections under this section shall be subject to approval by the state civil service commission.

History: 1982, Act 415, Eff. Mar. 30, 1983;—Am. 1989, Act 4, Eff. June 14, 1989.

791.514 Repealed. 2003, Act 121, Eff. Oct. 1, 2003.

Compiler's note: The repealed section pertained to minimum standards and requirements for local correctional officers.

791.515 Central training academy; establishment; provision of funds; separate appropriation.

Sec. 15. The department shall establish a central training academy for use as an employee training center for state correctional officers. Funds necessary for the establishment and use of the training academy shall be provided by the department and supported by separate appropriation.

History: 1982, Act 415, Eff. Mar. 30, 1983;—Am. 2003, Act 121, Eff. Oct. 1, 2003.

791.516 Annual report.

Sec. 16. The council shall make an annual report to the governor which includes pertinent data regarding the standards and requirements established and an evaluation on the effectiveness of correctional officer training programs.

History: 1982, Act 415, Eff. Mar. 30, 1983.

791.517 Rules.

Sec. 17. The council shall promulgate rules necessary to implement this act pursuant to Act No. 306 of the Public Acts of 1969, as amended, being sections 24.201 to 24.315 of the Michigan Compiled Laws.

History: 1982, Act 415, Eff. Mar. 30, 1983.

LOCAL CORRECTIONS OFFICERS TRAINING ACT
Act 125 of 2003

AN ACT to improve the training and education of local corrections officers; to provide for the certification of local corrections officers and the development of standards and requirements for local corrections officers; to provide for the creation of a sheriffs coordinating and training office and a local corrections advisory board; and to prescribe the powers and duties of certain local and state officers and agencies.

History: 2003, Act 125, Eff. Oct. 1, 2003.

The People of the State of Michigan enact:

791.531 Short title.

Sec. 1. This act shall be known and may be cited as the "local corrections officers training act".

History: 2003, Act 125, Eff. Oct. 1, 2003.

791.532 Definitions.

Sec. 2. As used in this act:

- (a) "Board" means the local corrections officers advisory board created in section 9.
- (b) "Council" means the sheriffs coordinating and training council described in section 4.
- (c) "Executive secretary" means the executive secretary of the council.
- (d) "Local correctional facility" means county jail, work camp, or any other facility maintained by a county that houses adult prisoners.
- (e) "Local corrections officer" means any person employed by a county sheriff in a local correctional facility as a corrections officer or that person's supervisor or administrator.
- (f) "Office" means the sheriffs coordinating and training office created in section 3.

History: 2003, Act 125, Eff. Oct. 1, 2003.

791.533 Sheriffs coordinating and training office; creation; head of office; chief executive officer; executive secretary.

Sec. 3. (1) The sheriffs coordinating and training office is created as an autonomous entity in the department of corrections. The department is not fiscally or programmatically responsible or liable for any of the responsibilities or duties of the office, council, or board contained in this act.

(2) The head of the office is the sheriffs coordinating and training council.

(3) The chief executive officer of the office is the executive secretary, who shall be appointed by the council and who shall hold office at the pleasure of the council. The executive secretary shall perform the functions and duties as may be assigned by the council. The council may employ other persons as it considers necessary to implement the intent and purpose of this act.

History: 2003, Act 125, Eff. Oct. 1, 2003.

791.534 Qualifications and appointment of members; vacancy; reappointment; terms.

Sec. 4. (1) The council consists of 7 members selected as follows:

- (a) The president of the Michigan sheriffs' association.
- (b) One member appointed to the council for a 1-year term, to be elected by the Michigan sheriffs' association, who shall be a sheriff from a county having a population of over 400,000.
- (c) One member appointed to the council for a 1-year term, to be elected by the Michigan sheriffs' association, who shall be a sheriff from a county having a population of between 100,000 and 400,000.
- (d) One member appointed to the council for a 1-year term, to be elected by the Michigan sheriffs' association, who shall be a sheriff from a county having a population under 100,000.
- (e) Two members appointed to the council for terms of 1 year each, who shall be elected by the deputy sheriff's association of Michigan.
- (f) One member appointed to the council for a 1-year term, who shall be elected by the jail administrators committee of the Michigan sheriffs' association.

(2) A member shall vacate his or her appointment upon termination of his or her official position as a sheriff or a deputy sheriff. A vacancy shall be filled in the same manner as the original appointment. A member appointed to fill a vacancy created other than by expiration of a term shall be appointed for the unexpired term of the member whom he or she is to succeed in the same manner as the original appointment. Any member may be reappointed for additional terms.

(3) The terms of the members first appointed shall begin January 1, 2004.

History: 2003, Act 125, Eff. Oct. 1, 2003.

791.535 Chairperson; vice-chairperson; designation; terms; reelection; meetings; conduct; compensation.

Sec. 5. (1) The council shall designate from among its members a chairperson and vice-chairperson, who shall serve for 1-year terms and who may be reelected.

(2) The council shall meet at least 4 times in each year and shall hold special meetings when called by the chairperson or, in the absence of the chairperson, by the vice-chairperson or when called by the chairperson upon the written request of 3 members of the council. The council shall establish its own procedures and requirements with respect to quorum, place, and conduct of its meetings and other matters.

(3) The business that the council may perform shall be conducted at a public meeting of the council held in compliance with the open meetings act, 1976 PA 267, MCL 15.261 to 15.275, and public notice of the time, date, and place of the meeting shall be given in the manner required by that act.

(4) The members of the council shall serve without compensation but shall be entitled to their actual expenses in attending meetings and in the performance of their duties.

History: 2003, Act 125, Eff. Oct. 1, 2003.

791.536 Holding public office or employment; disqualification prohibited.

Sec. 6. A member of the council shall not be disqualified from holding any public office or employment by reason of his or her appointment or membership on the council and shall not forfeit that public office or employment by reason of his or her appointment to the council, notwithstanding the provisions of any general, special, or local law, ordinance, or city charter.

History: 2003, Act 125, Eff. Oct. 1, 2003.

791.537 Administrative support services.

Sec. 7. Administrative support services for the council and executive secretary shall be provided by the council as provided by separate appropriation for the council.

History: 2003, Act 125, Eff. Oct. 1, 2003.

791.538 Standards and requirements.

Sec. 8. Not later than October 1, 2004 and as often as necessary after that, the council shall approve minimum standards and requirements for local corrections officers with respect to the following:

(a) Recruitment, selection, and certification of new local corrections officers based upon at least, but not limited to, work experience, educational achievement, and physical and mental fitness.

(b) New employee and continuing training programs.

(c) Recertification process.

(d) Course content of the vocational certificate program, the central training academy, and continuing training programs. The course content shall include education and training on how to identify and manage prisoners with a mental illness.

(e) Decertification process.

History: 2003, Act 125, Eff. Oct. 1, 2003.

791.539 Local corrections officers advisory board; creation; qualifications and appointment of members; terms; vacancy; reappointment; compensation; development and recommendation of standards and requirements; training facilities.

Sec. 9. (1) The local corrections officers advisory board is created within the council. The board shall consist of 9 members appointed by the council, as follows:

(a) Three members of the board shall be members of the deputy sheriff's association of Michigan.

(b) Three members of the board shall be members of the Michigan sheriffs' association.

(c) One member of the board shall be a member of the police officers association of Michigan.

(d) One member of the board shall be a member of the fraternal order of police.

(e) One member of the board shall be a member of the Michigan association of counties.

(2) All members of the board shall hold office for terms of 3 years each, except that of the members first appointed 3 shall serve for terms of 1 year each, 3 shall serve for terms of 2 years each, and 3 shall serve for terms of 3 years each. Successors shall be appointed in the same manner as the original appointment.

(3) A person appointed as a member to fill a vacancy created other than by expiration of a term shall be appointed in the same manner as the original appointment for the remainder of the unexpired term of the member whom the person is to succeed.

(4) Any member may be reappointed for additional terms.

(5) The members of the board shall serve without compensation but shall be entitled to their actual expenses in attending meetings and in the performance of their duties.

(6) Not later than April 1, 2004 and as often as necessary after that, the board shall develop and recommend minimum standards and requirements for local corrections officers and shall submit those standards and requirements to the council for the council's approval under section 8.

(7) The board shall recommend to the council all facilities that the board approves for providing training to local corrections officers under this act.

History: 2003, Act 125, Eff. Oct. 1, 2003.

791.540 Annual report.

Sec. 10. The board shall make an annual report to the council that includes pertinent data regarding the standards and requirements established and an evaluation on the effectiveness of local corrections officer training programs.

History: 2003, Act 125, Eff. Oct. 1, 2003.

791.541 Local corrections officer; certification.

Sec. 11. Beginning April 1, 2004, a person shall not be a local corrections officer unless he or she is certified or recertified by the council as provided in section 12 or 13. The council shall certify those persons and recertify on an annual basis those persons who satisfy the criteria set forth in section 12 or 13.

History: 2003, Act 125, Eff. Oct. 1, 2003.

791.542 Local corrections officer; evidence of employment; certification.

Sec. 12. Effective January 1, 2005, a person who is employed as a local corrections officer before January 1, 2005, upon furnishing the council satisfactory evidence of his or her employment as a local corrections officer, shall be certified and recertified by the council as a local corrections officer if he or she applies to the council for certification not later than April 1, 2004.

History: 2003, Act 125, Eff. Oct. 1, 2003.

791.543 Local corrections officer; certification; conditions.

Sec. 13. A person who was not employed as a local corrections officer before January 1, 2005 but who becomes employed as a local corrections officer on or after January 1, 2005 shall not be certified or recertified by the council unless he or she meets all of the following conditions:

(a) He or she is a citizen of the United States and is 18 years of age or older.

(b) He or she has obtained a high school diploma or attained a passing score on the general education development test indicating a high school graduation level.

(c) Not later than 12 months after becoming employed as a local corrections officer, he or she has fulfilled other standards and requirements developed by the board and approved by the council for certification.

(d) He or she has fulfilled standards and requirements developed by the council upon the recommendation of the board for recertification.

History: 2003, Act 125, Eff. Oct. 1, 2003.

791.543a Collective bargaining agreement; temporary transfer or assignment.

Sec. 13a. Nothing in this act supersedes a right granted under a collective bargaining agreement. A person who exercises a right pursuant to a collective bargaining agreement that results in that person being required to obtain certification under this act shall be allowed not less than 2 years to obtain that certification at the expense of the employer. Nothing in this act prohibits the county sheriff from temporarily transferring or assigning an uncertified employee to a position normally requiring certification or from using an uncertified employee to function as a corrections officer during any period of emergency.

History: 2003, Act 125, Eff. Oct. 1, 2003.

791.544 Duties of council.

Sec. 14. The council may do all of the following:

(a) Enter into agreements with other public or private agencies or organizations to implement the intent of this act.

(b) Cooperate with and assist other public or private agencies or organizations to implement the intent of this act.

(c) Make recommendations to the legislature on matters pertaining to its responsibilities under this act.

History: 2003, Act 125, Eff. Oct. 1, 2003.

791.545 Local corrections officers training fund; creation in state treasury; administration; source of funds; use; eligibility of counties to receive grants; reimbursement of fee; unexpended funds.

Sec. 15. (1) The local corrections officers training fund is created in the state treasury. The fund shall be administered by the council, which shall expend the fund only as provided in this section.

(2) There shall be credited to the local corrections officer training fund all revenue received from fees and civil fines collected under section 4b of 1846 RS 171, MCL 801.4b, and funds from any other source provided by law.

(3) The council shall use the fund only to defray the costs of continuing education, certification, recertification, decertification, and training of local corrections officers; the personnel and administrative costs of the office, board, and council; and other expenditures related to the requirements of this act. Only counties that forward to the fund 100% of fees collected under section 4b of 1846 RS 171, MCL 801.4b, are eligible to receive grants from the fund. A county that receives funds from the council under this section shall use those funds only for costs relating to the continuing education, certification, recertification, and training of local corrections officers in that county and shall not use those funds to supplant current spending by the county for those purposes, including state grants and training funds.

(4) The council, upon written request, shall reimburse the full amount of any fee paid by a person under section 4b of 1846 RS 171, MCL 801.4b, if the person was incarcerated pending trial and was found not guilty or the prosecution against the person was terminated for any reason. The council shall create and make available to all local correctional facilities in this state a written form explaining the provisions of this subsection. The form shall include the address to which the reimbursement request should be sent.

(5) Unexpended funds remaining in the fund at the end of the fiscal year shall remain in the fund and shall not revert to the general fund.

History: 2003, Act 125, Eff. Oct. 1, 2003.

791.546 Acceptance of funds, grants, and gifts.

Sec. 16. The council may accept funds, grants, and gifts from any public or private source which shall be used to defray the expenses incident to implementing its responsibilities under this act.

History: 2003, Act 125, Eff. Oct. 1, 2003.

EXECUTIVE REORGANIZATION ORDER
E.R.O. No. 1995-14

791.601 Transfer of powers and duties of office of community alternatives to department of corrections by type II transfer.

WHEREAS, Article V, Section 2, of the Constitution of the State of Michigan of 1963, empowers the Governor to make changes in the organization of the Executive Branch or in the assignment of functions among its units which he considers necessary for efficient administration; and

WHEREAS, Act No. 511 of the Public Acts of 1988 ("Act No. 511"), the Community Corrections Act, created an Office of Community Alternatives as an autonomous entity within the Department of Corrections; and

WHEREAS, the purpose of Act No. 511 is to fund qualifying community corrections alternative programs that reduce state prison commitments by encouraging participation of offenders likely to be sentenced to imprisonment in a state correctional facility or jail, who would not increase the risk to public safety, have not demonstrated a pattern of violent behavior, and do not have a criminal record that indicates a pattern of violent offenses; and

WHEREAS, Act No. 511 expressly requires that continued funding shall be contingent upon substantial compliance with this objective; and

WHEREAS, Sec. 1006 of Enrolled House Bill 4418, the FY 1996 appropriations bill for the Department of Corrections, for the first time affords the Office of Community Alternatives (Corrections) express authority to approve use of its funds for the construction of facilities, which are to be minimum security facilities; it is essential that such decisions be integrated into and coordinated with comprehensive facilities planning for the Department of Corrections; and

WHEREAS, this goal can be achieved only by coordination of corrections and corrections alternative policies; and

WHEREAS, it is necessary in the interests of efficient administration and effectiveness of government to effect changes in the organization of the Executive Branch of government.

NOW, THEREFORE, I, John Engler, Governor of the State of Michigan, pursuant to the powers vested in me by the Constitution of the State of Michigan of 1963, and the laws of the State of Michigan, do hereby order the following:

1. All the statutory authority, powers, duties, functions and responsibilities, including the functions of budgeting, procurement and management-related functions, created under Act No. 511 of the Public Acts of 1988, are hereby transferred from the Office of Community Alternatives to the Department of Corrections by Type II transfer, as defined by Section 3 of Act No. 380 of the Public Acts of 1965, being Section 16.103 of the Michigan Compiled Laws.

2. The Director of the Department of Corrections may appoint the Executive Director of the Office of Community Alternatives or may administer the assigned functions in other ways to promote efficient administration.

3. The Director of the Department of Corrections shall provide executive direction and supervision for the implementation of the transfer. The assigned functions shall be administered under the direction and supervision of the Director, and all prescribed functions of rule-making, licensing and registration, including the prescription of rules, regulations, standards and adjudications, shall be transferred to the Director of the Department of Corrections.

4. All records, personnel, property and unexpended balances of appropriations, allocations and other funds used, held, employed, available or to be made available to the Office of Community Alternatives for the activities transferred to the Department of Corrections by this Order are hereby transferred to the Department of Corrections.

5. The Director of the Department of Corrections shall make internal organizational changes as may be administratively necessary to complete the realignment of responsibilities prescribed by this Order.

6. The Executive Director of the Office of Community Alternatives and the Director of the Department of Corrections shall immediately initiate coordination to facilitate the transfer and develop a memorandum of record identifying any pending settlements, issues of compliance with applicable federal and state laws and regulations, or other obligations to be resolved by the Office of Community Alternatives.

7. All rules, orders, contracts and agreements relating to the assigned functions lawfully adopted prior to the effective date of this Order shall continue to be effective until revised, amended or repealed.

8. Any suit, action or other proceeding lawfully commenced by or against any entity affected by this Order shall not abate by reason of the taking effect of this Order. Any suit, action or other proceeding may be

maintained by or against the appropriate successor of any entity affected by this Order.

In fulfillment of the requirement of Article V, Section 2, of the Constitution of the State of Michigan of 1963, the provisions of this Executive Order shall become effective 60 days after filing.

History: 1995 E.R.O. No. 1995-14, Eff. Sept. 10, 1995.